

October 4, 2007

VIA OVERNITE EXPRESS

Michael Massey, Esq.
United States Environmental Protection Agency, Region IX
Office of Regional Counsel ORC-3
75 Hawthorne Street
San Francisco, CA 94105

Re: Soco West, Inc/Herman and Isabelle Benjamin/Benjamin Family Trust General
Response to Information Requests for the San Fernando Valley/North Hollywood
Superfund Site, North Hollywood California

Dear Mr. Massey:

The purpose of this letter is to respond generally to three Information Requests involving the San Fernando Valley/North Hollywood Superfund Site, North Hollywood, CA (hereafter "North Hollywood Site"), forwarded to Soco West, Inc. (hereafter "Soco West"), Mr. Herman and Mrs. Isabella Benjamin, and the Benjamin Family Trust (Mr. and Mrs. Benjamin and the Benjamin Family Trust are hereafter collectively referred to as the "Benjamins"). As we discussed by phone on September 25, we are hopeful the information below and enclosed will answer the substance of EPA's requests, but stand ready to provide any additional information EPA may seek, to the extent such information is available to Soco West or the Benjamins.

As we briefly discussed and as further detailed below, my client in this matter, Soco West, became the successor-in-interest to Holchem, Inc. ("Holchem") in 2001. Since the information requested relates to matters that occurred several years before 2001, unfortunately, Soco West has no institutional knowledge regarding the prior operations conducted at 13540 and 13546 Desmond Street, Pacoima, California (hereafter, the "Facility") or the North Hollywood Site. Further, none of the individuals that were previously involved in the operations at the Facility are currently affiliated with Soco West.

Mr. Benjamin has some memory of the operation of his company, Chase Chemical Company ("Chase Chemical"), which company operated at the Facility from approximately 1967 to 1987, but Mr. Benjamin is an elderly gentleman and Chase Chemical ceased operations over twenty years ago. Moreover, a vast majority of Mr. Benjamin's files have long since been discarded, and Soco West does not have such documents. Still, to the extent that the information

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provided below does not sufficiently respond to EPA's requests, Soco West and the Benjamins will endeavor to work with the EPA in an attempt to respond further to EPA's inquiries.

The following discussion and attached documents will hopefully answer all questions EPA may have with respect to the involvement of Holchem and the Benjamins in the prior Second Partial Consent Decree entered in the consolidated case of *United States of America v. Allied Signal, Inc.* ("North Hollywood Site Consent Decree"), as well as those questions involving the status of the assessment and remediation of soil and groundwater at the Facility. Additional background information concerning the assessment and cleanup work involving the Facility itself is set forth in the Consent Decrees that have been entered by the U.S. District Court, the most recent of which was entered on July 25, 2007. A copy of the initial Consent Decree, which provided for the assessment and preparation of a Remedial Action Plan ("RAP") for the Facility, is attached and marked as Exhibit "1" ("First Consent Decree"). The required work under the First Consent Decree has been completed, as reflected in the attached Statement of Completion. (Exhibit "2.") A copy of the Second Consent Decree, which provides for the implementation of the RAP, i.e., the remediation of soil and groundwater contamination involving the Facility, is attached and marked as Exhibit "3" ("Second Consent Decree").

Holchem was sued in 1995 by a company known as Los Angeles By-Products ("By-Products"), for declaratory relief and contribution under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA" – 42 USC § 9601, *et seq.*). The complaint was in the form of a Second Amended Third Party Complaint filed in the consolidated actions referred to as *United States of America v. Allied Signal, Inc., et al.*, Civil Case Nos. 93-6490 and 93-6570 MRP (Tx). Holchem answered the By-Products Third Party Complaint, and filed its own Third Party Complaint against the Benjamins, who in turn counterclaimed against Holchem. Ultimately, the By-Products' Third Party Complaint, and related counter and cross-claims, were settled through a Settlement Agreement and Mutual Release dated July of 1996, between By-Products, Holchem and the Benjamins, along with Chase Chemical. (Attached as Exhibit "4") The Settlement Agreement was conditioned on the parties thereto becoming parties to the North Hollywood Site Consent Decree entered into with U.S. EPA and the State of California, and receiving contribution protection thereunder.

The basis of the By-Products' Third Party Complaint was the allegation that the chemical distribution operations conducted at the Facility had resulted in releases of hazardous substances, which in turn migrated some **4.5 miles** to the By-Products' property (a former solid waste landfill known as the "Penrose Landfill") thereby being one of the causes for By-Products having been designated as a responsible party in the North Hollywood Site. Although Holchem, the Benjamins and Chase Chemical did not deny the fact that the Facility property had been contaminated by operations conducted thereon, said parties vehemently denied there was any

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basis in law or fact to claim that the contamination on the Penrose Landfill could have physically been caused by the releases that occurred at the Facility.

The total amount paid (\$45,000) by the Benjamins under the Second Partial Consent Decree for the North Hollywood Site was a nuisance payment that was reflective of the significant distance between the boundary of the Facility and the Penrose Landfill, as well as the fairly universally recognized slow moving groundwater in the San Fernando Valley. (See e.g., a September 23, 1987 Memorandum from USEPA, subject Record of Decision for a Remedial Action for Area 1 of the San Fernando Valley Superfund Sites, a copy of which is attached as Exhibit "5" (hereafter "1987 EPA Memo"). In the Site History section, the 1987 EPA Memo provides that the contamination in the North Hollywood/Burbank area was spreading "with the flow of groundwater towards the southwest, at a rate of approximately 300 feet per year." (See page 2 of Exhibit "5") As such, in light of the slow velocity of the groundwater, along with the significant distance between the subject Facility and the Penrose Landfill, Holchem and the Benjamins argued that the By-Products' claims against them could be neither technically nor mathematically supported.

The parties engaged in mediation before the Special Master in the *Allied Signal* action, the Honorable Ralph J. Geffen, to resolve their dispute over responsibility for the North Hollywood Site contamination. Holchem and the Benjamins specifically conditioned any settlement with By-Products on said parties being included in the Partial Consent Decree for the North Hollywood Site to be entered into with both U.S. EPA and the State of California. The parties then collectively agreed to the terms ultimately approved by the U.S. District Court in May of 1997.

Thereafter, in January of 1998, the Benjamins filed suit against Holchem over alleged responsibility for releases of hazardous substances at the Facility, with that lawsuit being settled in October of 1999. (See Exhibit "6") One of the essential terms of this 1999 Settlement Agreement between Holchem and the Benjamins concerned the parties' agreement to enter into the First Consent Decree involving the Facility, with the California Environmental Protection Agency, Department of Toxic Substances Control ("DTSC"). This First Consent Decree required further assessment and monitoring of soil and groundwater contamination at and from the Facility, along with the preparation and approval of a remedial action plan ("RAP") to address said contamination. (See Exhibit "1") All of the parties at the time, including DTSC, also envisioned that a Second Consent Decree would be needed to provide for the implementation of the RAP that was to be developed. (See Exhibit "3")

Holchem and the Benjamins' obligations under the First Consent Decree have now been fully complied with, as reflected in the attached Statement of Completion. (See Exhibit "2").

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On December 18, 2006 the Second Consent Decree for the Facility was executed by Soco West, which Decree was again approved and entered by the U.S. District Court in that action entitled *The California Department of Toxic Substances Control, et al. v. Holchem, Inc., et al.* The Second Consent Decree provides for the implementation of the RAP by Soco West, and further provides that, so long as the parties are in compliance with the terms of the Second Consent Decree, Soco West and the Benjamins are to have contribution protection from third party claims for contribution. DTSC also provided a Covenant Not to Sue to Holchem, and the Benjamins.

As reflected in the First and Second Consent Decrees, the prior operations conducted on the Facility involved chemical distribution operations, i.e., the purchase of chemical products, the storage of those products, and the sale and distribution of those products to third party customers. Mr. and Mrs. Benjamin conducted the operations through Chase Chemical Company starting in approximately 1967. Effective July 1, 1987, Holchem purchased most of the assets of Chase Chemical Company, and leased the Facility premises from the Benjamins. Although the contamination that arose from operations at the Facility consisted of various volatile organic compounds, chromium is not and has never been a contaminant of concern at the Facility (see the First and Second Consent Decrees, Exhibits "1" and "3" hereto), and according to Mr. Benjamin, chromium is not believed to be a product that was ever stored at or distributed from the Facility.

The property the Facility sits on consists of approximately 2.25 acres. Mr. Benjamin first acquired the property in or about 1968, with title to the property being transferred in October 1987 to the Benjamin Trust. In November 1999, as a part of the settlement agreement between Holchem and the Benjamins, the property was transferred to Holchem. In July of 2001, Holchem merged into Soco West. From 2001 until approximately the first quarter of 2004, packaged product was stored at the Facility. Further, from about the time of the merger and to the present, there has been no active business operations or employees at the Facility. The primary activities at the Facility, from the time of the merger to the present date, have been limited to the ongoing assessment and remedial activities undertaken pursuant to the First and now Second Consent Decrees.

Finally, we have conferred with the State's Attorney General's office concerning the 104(e) Requests, and were advised that both the First and Second Consent Decrees had previously been forwarded to U.S. EPA for its review and files.

We are hopeful that the above and enclosed information will resolve all of EPA's substantive questions raised with the 104(e) Requests, but ask that you not hesitate to contact the undersigned if you or anyone else within the EPA have any questions or need any additional information regarding these matters. We understand you may deem the information provided

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herein sufficiently responsive to the 104(e) Request, or, alternatively, may determine that further information or specific responses are necessary. We await your review, and thank you for your cooperation in this matter.

Sincerely,

RUTAN & TUCKER, LLP



Richard Montevideo

RM:clc

cc: Ms. Kim Muratore (with enclosures)
Dennis Ragen, Esq., California Deputy Attorney General
Mr. and Mrs. Herman Benjamin
Mr. Greg Fiol, ARCADIS
Mr. Randy Zimbardo, Soco West, Inc.

First Consent Decree

EXHIBIT “1”

COPY

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Attorneys for Plaintiffs

IN UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

THE CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL; THE CALIFORNIA
HAZARDOUS SUBSTANCE ACCOUNT; THE
CALIFORNIA HAZARDOUS WASTE CONTROL
ACCOUNT; THE TOXIC SUBSTANCES
CONTROL ACCOUNT; and THE SITE
REMEDIALATION ACCOUNT,

Plaintiffs,

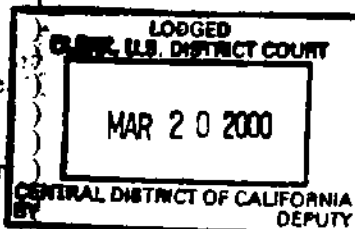
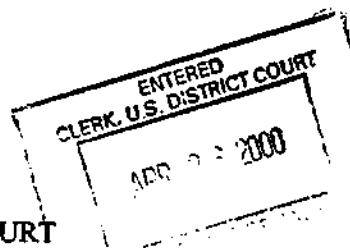
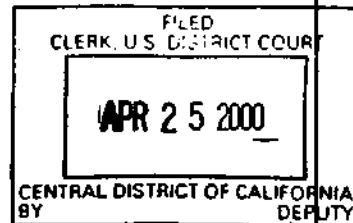
v.

HOLCHEM, INC., a California corporation;
HERMAN BENJAMIN, individually and as trustee
of the Benjamin Family Trust dated October 13,
1987; ISABEL BENJAMIN, individually and as
trustee of the Benjamin Family Trust dated October
13, 1987; and CHASE CHEMICAL COMPANY,
INC., a dissolved California corporation.

Defendants.

CASE NO. CV 99-12467 CM

CONSENT DECREE



THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d)

Consent Decree - November 4, 1999

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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 **THE CALIFORNIA DEPARTMENT OF TOXIC**
12 **SUBSTANCES CONTROL; THE HAZARDOUS**
13 **WASTE CONTROL ACCOUNT; THE**
14 **HAZARDOUS SUBSTANCE ACCOUNT; THE**
TOXIC SUBSTANCES ACCOUNT; and THE
SITE REMEDIATION ACCOUNT,

15 Plaintiffs.

16 v.

17 **HOLCHEM, INC.,** a California corporation;
18 **HERMAN BENJAMIN,** individually and as
trustee of the Benjamin Family Trust dated
19 October 13, 1987; **ISABEL BENJAMIN,**
individually and trustee of the Benjamin Family
20 Trust dated October 13, 1987; and **CHASE**
CHEMICAL COMPANY, INC., a dissolved
21 California corporation.

22 Defendants.
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CASE NO.

CONSENT DECREE

HB

1 **INTRODUCTION**

2 **A. The General Purpose of the Decree.**

3 The Parties to this Consent Decree are HOLCHEM, INC. ("Holchem"),
4 HERMAN BENJAMIN, individually and as co-trustee of the Benjamin Family Trust dated
5 October 13, 1987, ISABEL BENJAMIN, individually and as co-trustee of the Benjamin Family
6 Trust dated October 13, 1987 and CHASE CHEMICAL COMPANY, INC., a dissolved
7 California corporation, (collectively referred to as the "Benjamin Defendants") and the
8 CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL (the "Department" or
9 "DTSC"), the CALIFORNIA HAZARDOUS WASTE CONTROL ACCOUNT, the
10 CALIFORNIA HAZARDOUS SUBSTANCE ACCOUNT, the TOXIC SUBSTANCES
11 CONTROL ACCOUNT and the SITE REMEDIATION ACCOUNT (collectively referred to as
12 the "Plaintiffs"). The Parties enter into this Consent Decree ("Decree" or "Consent Decree") in
13 order to ensure that certain important steps are taken toward the cleanup of the contaminated
14 Chase Chemical Site located at 13540 and 13546 Desmond Street in Pacoima, California (the
15 "Site").

16 Plaintiffs have filed a complaint in this matter (the "Complaint") against Holchem
17 and the Benjamin Defendants (individually and collectively referred to herein as the "Defendants")
18 pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42
19 U.S.C. §9601, et seq., as amended by the Superfund Amendments and Reauthorization Act of
20 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) ("CERCLA"), and including a supplemental
21 claim pursuant to the Hazardous Substance Account Act, California Health and Safety Code §
22 25300, et seq. (the "HSAA"). In the Complaint, the Plaintiffs assert (1) that Holchem is one of
23 the "operators" of the Site, as that term is defined under CERCLA and the HSAA, (2) that the
24 Benjamin Defendants are past and present "owners" and/or "operators" of the Site, as those
25 terms are defined under CERCLA and the HSAA, and (3) that Holchem and the Benjamin
26 Defendants are therefore liable for the costs that have been, or will be, incurred in response to
27 releases and threatened releases of hazardous substances at and from the Site.

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1 This Decree resolves portions of the claims asserted in the Complaint, and requires
2 the Defendants to do the following:

3 Holchem will (1) implement those removal actions as set forth below that are
4 necessary at this time in order to minimize the spread of hazardous substances from the Site; (2)
5 prepare a Remedial Action Plan (RAP) for the Site; and (3) pay certain costs that Plaintiffs have
6 incurred or will incur with respect to the Site.

7 The Benjamin Defendants will pay \$35,000 toward the costs that Plaintiffs have
8 incurred with respect to the Site. In addition, pursuant to a separate agreement that is being
9 entered into between Holchem and the Benjamin Defendants concurrently with the execution of
10 this Decree (the "Private Settlement Agreement"), the Benjamin Defendants and their insurers
11 have also agreed to pay Holchem to fund portions of the work required of Holchem under this
12 Decree.

13 This Decree does not address the remedial work for the Site that will be required
14 in order to implement the RAP and, under this Decree, the Defendants are neither required to,
15 nor released from any obligation to, undertake such remedial work.

16 The Defendants deny that they are liable parties under CERCLA, the HSAA or
17 any other state or federal law, and deny that they have any liability to Plaintiffs or to any other
18 person. Holchem further contends that the work to be performed under this Consent Decree
19 is necessary because of the actions, inactions and/or omissions at the Site prior to the
20 commencement of Holchem's operations in July of 1987. The Benjamin Defendants contend
21 that this work is necessary because of acts or omission that occurred after Holchem took
22 possession of the Facility. The Defendants further contend that this work, or portions of it, is
23 necessary because of the acts or omissions of other persons or entities who are not parties to
24 this Decree. Plaintiffs and Defendants agree that the actions undertaken by the Defendants in
25 accordance with this Consent Decree do not constitute an admission of liability on the part of
26 either Holchem or the Benjamin Defendants. The Defendants do not admit either (1) any of
27 the facts set forth in the Statement of Facts contained in Section III of this Consent Decree (Site
28 Background), or (2) any other allegations of fact or law set forth in this Consent Decree and/or

1 in the Complaint. The Defendants reserve their rights to controvert any such allegations in
2 any subsequent proceeding (other than a proceeding to implement or enforce the terms of this
3 Consent Decree).

4 This Consent Decree is entered into by DTSC pursuant to its authority under
5 Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, 42 U.S.C. 9621, et seq.,
6 Section 7003 of RCRA, 42 U.S.C. §§ 6973 and California Health & Safety Code ("H&SC")
7 §§ 25100 et seq, 25187, 25355.5, 25358.3, 25360, 58009 and 58010.

8 Pursuant to the aforementioned authority and pursuant to CERCLA § 113(f)(2),
9 42 U.S.C. § 9613(f)(2), Plaintiffs and the Defendants each have stipulated and agreed to the
10 making and entry of this Consent Decree prior to the taking of any testimony.

11 Plaintiffs and the Defendants agree that this settlement and entry of this Consent
12 Decree are made in good faith, in an effort to avoid expensive and protracted litigation and to
13 benefit the environment and the community, without any admission or finding of liability or
14 fault as to any allegation or matter.

15 NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED, as
16 follows:

17 **I. JURISDICTION**

18 The Court has jurisdiction over the subject matter of this action pursuant to 28
19 U.S.C. § 1331 and CERCLA, 42 U.S.C. § 9601 et seq., and supplemental jurisdiction over
20 the claims arising under the laws of the State of California, pursuant to 28 U.S.C. § 1367.
21 Solely for the purposes of this Consent Decree and the underlying Complaint, the Defendants
22 waive service of summons and agree to submit to the jurisdiction of this Court and to venue in
23 this District. The Defendants agree not to challenge or object to entry of this Decree by the
24 Court unless DTSC previously has notified them in writing that it no longer supports entry of
25 the Decree or that it seeks to modify the Decree. The Defendants and Plaintiffs agree not to
26 challenge this Court's jurisdiction to enforce the terms of this Decree once it has been entered.

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1 **II. PARTIES BOUND**

2 A. The "Parties" to this Consent Decree are Holchem, the Benjamin
3 Defendants, DTSC, the California Hazardous Waste Control Account, the California Hazardous
4 Substance Account, the Toxic Substances Control Account and the Site Remediation Account.

5 B. The Defendants have agreed to pay the amounts specified under Section
6 VIII of this Decree (Payment of DTSC Costs), and Holchem has agreed to undertake the Work
7 and certain other obligations set forth in this Decree.

8 C. The Benjamin Defendants have agreed to pay \$35,000 of the amount
9 specified under Subsection VIII.A of this Decree (Past Response Costs) to DTSC. In addition,
10 pursuant to the terms of the Private Settlement Agreement, the Benjamin Defendants through
11 their insurers have agreed to pay Holchem a sum of money which is to be used to fund a
12 portion of the Work required of Holchem under this Decree. Holchem's obligations under this
13 Decree are not contingent upon the receipt of any such funding from the Benjamin Defendants
14 or their insurers or upon the Benjamin Defendants' compliance with the Private Settlement
15 Agreement or this Decree. The Benjamin Defendants' obligations under this Decree are not
16 contingent on the Holchem's compliance with the Private Settlement Agreement or this Decree.

17 D. This Consent Decree applies to and is binding upon the Plaintiffs, the
18 Benjamin Defendants, and upon Holchem and the following "Holchem Related Parties":
19 Holchem's present and former officers, directors, shareholders, agents, employees, contractors,
20 consultants, receivers, trustees, successors and assignees, including but not limited to,
21 individuals, partners, and subsidiary, parent and sister corporations including, without
22 limitation, HCI USA Distribution Companies, Inc., Holland Chemical International, N.V. and
23 Holland Chemical International, Ltd., a liquidated corporation. Any change in ownership,
24 partnership status or corporate status of Holchem including, but not limited to, any transfer of
25 assets or real or personal property, shall in no way alter Holchem's rights or responsibilities
26 under this Consent Decree.

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1 E. The Defendants shall be responsible and shall remain responsible for
2 carrying out all activities required of them under this Consent Decree. All actions taken by
3 Plaintiffs pursuant to this Decree, including all approvals, reservations of rights, and covenants
4 not to sue are solely those of the Plaintiffs and of no other agencies.

5 F. Holchem shall be responsible for ensuring that its contractors and
6 subcontractors perform the Work contemplated herein in accordance with this Consent Decree.
7 With regard to the activities undertaken pursuant to this Consent Decree, each contractor and
8 subcontractor shall be deemed to be in a contractual relationship with Holchem within the
9 meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

10 III. SITE BACKGROUND

11 The following is a summary of the Site background as alleged by Plaintiffs:

12 A. The Facility.

13 The facility which is the subject of this Decree is located at 13540 and 13546
14 Desmond Street, Pacoima, County of Los Angeles, California, 91331 ("Facility").

15 B. The Owner/Operator.

16 The Facility premises are owned by the Benjamin Defendants. From 1967 until
17 1987, Mr. and Mrs. Benjamin owned and operated Chase Chemical Company, Inc. ("Chase
18 Chemical,") a distributor of chemical hazardous substances, that did business at the Facility.

19 Plaintiffs allege and the Benjamin Defendants deny that during the time that the Benjamin
20 Defendants owned and operated the Facility, hazardous substances were released onto the soils
21 there and were also released into the subsurface groundwater. As part of the Private Settlement
22 Agreement, ownership and title to the Facility premises are to be transferred to Holchem.

23 C. The Operator.

24 Effective July 1, 1987, Holchem purchased certain assets of Chase Chemical
25 and leased the Facility premises from the Benjamin Defendants. Holchem, has operated the
26 Facility since July 1, 1987 and is the current operator of the Site. Plaintiffs allege and Holchem
27 denies that during the time of Holchem's operator status, hazardous substances have been
28 released onto the soils and into the subsurface groundwater at the Site.

1 **D. Physical Description of the Facility.**

2 The Facility occupies approximately two acres in an industrial/residential area
3 of Pacoima in Los Angeles County. There are two buildings on the Facility; one contains
4 offices and packaging operations and the other is a large warehouse. The Facility is presently
5 covered by asphalt and concrete. The Facility also houses at least twenty-one (21)
6 Aboveground Storage Tanks ("AGSTs"), a drum rinse area with a clarifier that is used for pH
7 control, two (2) sumps for run-off protection, and a drum storage area containing 55 gallon
8 drums. The Facility formerly housed nineteen (19) Underground chemical Storage Tanks
9 ("USTs"), which were replaced in December 1998 with two 20,000 gallon and one 21,000
10 gallon double wall, multi-component USTs. Because Holchem is in the business of distributing
11 chemicals, various hazardous substances are presently and have previously been stored in
12 various AGSTs, USTs and containers at the Facility. There are six (6) monitoring wells
13 ("MWs") on the Facility. The entire perimeter of the Facility is fenced.

14 **E. Facility History and Operations.**

15 During the period from 1967 to 1987, in which the Benjamin Defendants owned
16 and operated Chase Chemical, a large quantity of various hazardous substances was stored at
17 the Facility and distributed to other companies. After Holchem purchased certain assets of
18 Chase Chemical in 1987, it operated the Facility as a lessee of the Benjamin Defendants. Some
19 hazardous substances on the Facility's Product Lists have been found in Facility soils and
20 beneath the Facility in the underlying groundwater.

21 **F. Soil Contamination.**

22 As a result of the past operations at the Facility, the soil at the Site has become
23 contaminated with various hazardous substances, including Benzene, Ethylbenzene, Toluene,
24 Xylenes (BETX), Acetone, Methyl Ethyl Ketone (MEK), 4-Methyl 2-Pentanone (MIBK), 2-
25 Hexanone, Methylene Chloride, 1, 1, 1 Trichloroethane (TCA), Trichloroethylene (TCE), 1,
26 1-Dichloroethane (1, 1-DCA), 1, 2-Dichloroethane (1, 2-DCA), Tetrachloroethylene (PCE) and
27 possibly other hazardous substances.

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1 **G. Groundwater Contamination.**

2 The groundwater beneath the Site has been contaminated with BETX, Acetone,
3 MEK, MIBK, Methylene Chloride, TCA, TCE, 1, 1-DCA, 1, 2-DCA, PCE, 1, 1-
4 Dichloroethylene (1, 1-DCE), Cis-1, 2-Dichloroethene (Cis-1, 2-DCE), Trans-1, 2-
5 Dichloroethene (Trans-1, 2-DCE) and other hazardous substances.

6 **H. Regulatory History.**

7 Prior to DTSC's involvement and since 1988, the Regional Water Quality
8 Control Board ("RWQCB") had been overseeing the Site and required that semiannual
9 groundwater monitoring be conducted by the Benjamin Defendants. In 1996, the RWQCB
10 referred the Site to the United States Environmental Protection Agency ("U.S. EPA") for
11 further evaluation. U.S. EPA then tasked DTSC to conduct a Preliminary Endangerment
12 Assessment/Site Inspection ("PEA/SI"), through a Cooperative Agreement between the two
13 agencies. While performing the PEA/SI, DTSC and U. S. EPA determined that the Site would
14 be better addressed as a DTSC-lead site. In 1996, the Site was removed from the Cooperative
15 Agreement and thereupon became a DTSC-lead site.

16 On April 21, 1997, DTSC issued an Imminent and Substantial Endangerment
17 Order ("I&SE Order") to Holchem and the Benjamin Defendants. While the Benjamin
18 Defendants initially took timely steps toward compliance with the I&SE Order, Plaintiffs have
19 alleged that the Benjamin Defendants did not comply with the I&SE Order, and DTSC
20 consequently served them with a notice of noncompliance with that Order.

21 Holchem disputed, and continues to dispute, any liability or responsibility under
22 the I&SE Order. On May 21, 1997, Holchem filed a Petition for Writ of Mandate and a
23 complaint for a Preliminary and Permanent Injunction against DTSC in Los Angeles County
24 Superior Court, LASC Case No. BS045143, in which Holchem alleged, among other things,
25 that Holchem was not provided an opportunity, as required by law, to present its defenses to
26 the I&SE Order and that Holchem is not a responsible party for the contamination at issue. On
27 or about August 21, 1997, pursuant to a stipulation between Holchem and DTSC, LASC Case

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1 no. BS045143 was dismissed, without prejudice. The parties stipulated that, in order to give
2 Holchem an opportunity to present DTSC with its defenses to the I&SE Order, DTSC would
3 not seek to enforce that Order without giving Holchem thirty days' notice of its intent to do so.

4 As set forth in Section XI.B of this Decree (The I&SE Order), the obligations
5 imposed upon the Defendants under the I&SE Order are replaced and superseded by the
6 requirements of this Decree.

7 **I. Hazardous Substances.**

8 The contaminants found at the Site include hazardous substances as defined by
9 Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and H&SC §§ 25316 and 25317 and
10 hazardous wastes as defined in H&SC § 25117.

11 **J. Releases.**

12 There have been releases and threatened releases of hazardous substances at the
13 Site.

14 **K. Facility.**

15 The property located at 13540 and 13546 Desmond Street in Pacoima, California
16 is a "facility" as that term is defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

17 **L. Person/Operator.**

18 Holchem is a "person" as that term is defined by Section 101(21) of CERCLA,
19 42 U.S.C. § 9601(21) and H&SC § 25319 who is the operator of the Facility from which there
20 has been the release and threatened release of hazardous substances. The Benjamin Defendants
21 are each "persons" as that term is defined by Section 101(21) of CERCLA, 42 U.S.C. §
22 9601(21) and H&SC § 25319 and (i) are the owners of the Facility and (ii) were the operators
23 of the Facility at the time of the release and threatened release of hazardous substances.

24 **M. Response Activities.**

25 DTSC has identified the following response actions which Holchem has agreed
26 to undertake at the Site: (1) Design, implementation and operation of an interim removal
27 action necessary to minimize the spread of contaminants from the Site; this removal action
28 includes the installation of a soil vapor extraction and air sparging system; and (2) Preparation

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1 of a Remedial Investigation/Feasibility Study ("RI/FS") and RAP for the Site. In addition,
2 Holchem has removed the 19 chemical USTs and 2 other USTs formerly located at the Site,
3 pursuant to the jurisdiction of the Los Angeles County Fire Department. —

4 IV. DEFINITIONS

5 Unless otherwise expressly provided herein, terms used in this Consent Decree
6 which are defined in CERCLA or in regulations promulgated under CERCLA shall have the
7 meaning assigned to them therein. Whenever terms listed below are used anywhere in this
8 Consent Decree or its exhibits if any, the following definitions shall apply:

9 1. "CERCLA" shall mean the Comprehensive Environmental Response,
10 Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and
11 Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986), 42 U.S.C. §§ 9601,
12 et seq., as amended.

13 2. "Consent Decree" or "Decree" shall mean this Consent Decree and its
14 attachments and exhibits.

15 3. "Contractor" shall mean the individual, company or companies retained
16 by or on behalf of Holchem to undertake and complete the Work.

17 4. "Day" shall mean a calendar day unless expressly stated to be a working
18 day. In computing any period of time under this Consent Decree, where the last day would fall
19 on a Saturday, Sunday, or State or Federal holiday, the period shall run until the close of
20 business of the next working day.

21 5. "Facility" is defined at Section 101(9) of CERCLA, 42 U.S.C. § 9601(9),
22 and shall mean the property located at 13540 and 13546 Desmond Street in Pacoima,
23 California.

24 6. "National Contingency Plan" or "NCP" shall refer to the National Oil and
25 Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of
26 CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300.

27 7. "Oversight" shall mean inspection, review, advice, direction and
28 comments performed or provided by DTSC, its contractors, or its representatives, with respect

1 to any of the following actions taken by Holchem pursuant to this Decree: (1) any
2 investigatory, removal or remedial activities; (2) any plans, assessments or reports; and (3) the
3 performance of the Work. "Oversight" shall also include any actions, including but not limited
4 to, sampling, testing or analysis, taken by DTSC, its contractors or its representatives, that are
5 necessary to verify or ensure the adequacy of the Work or of any other activity undertaken, or
6 proposed to be undertaken, by Holchem pursuant to this Decree.

7 8. "Parties" shall mean Holchem, the Benjamin Defendants, and the
8 Plaintiffs, DTSC, the California Hazardous Waste Control Account, the California Hazardous
9 Substances Account, the Toxic Substances Control Account and the Site Remediation Account.

10 9. "Past Response Costs" shall mean all costs, including, but not limited to,
11 interest, that DTSC has incurred on behalf of Plaintiffs with regard to the Site up until August
12 1, 1999.

13 10. "Plan(s)" or "Workplan(s)" shall mean the plans and designs developed
14 by or on behalf of Holchem or other potentially responsible parties which detail the elements
15 of the Work to be conducted pursuant to this Consent Decree.

16 11. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42
17 U.S.C. § 6901, et seq. (also known as the Resource Conservation and Recovery Act).

18 12. "Report(s)" shall mean the reports developed by Holchem in compliance
19 with this Decree, detailing the Work and the results of its implementation.

20 13. "Site" shall mean the vertical and areal extent of hazardous substance
21 contamination at and from the Facility located at 13540 and 13546 Desmond Street in Pacoima,
22 California.

23 14. "Waste Material" shall mean (1) any "hazardous substance" as defined
24 under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) that is in, or threatens to migrate
25 to or from, soil or groundwater at the Site; (2) any "hazardous substance" as defined under
26 California H&SC §§ 25316 and 25317 that is in, or threatens to migrate to or from, soil or
27 groundwater at the Site or (3) any "hazardous waste" as defined under H&SC § 25117.

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1 15. "Work" shall mean the implementation, in accordance with this Decree,
2 of the tasks and activities defined herein, including but not limited to: Section VI (General
3 Obligations Respecting the Work to be Performed); Section VII (Specific Work to Be
4 Performed); and such work as may be modified pursuant to the provisions of this Consent
5 Decree; and any schedules or plans required to be submitted pursuant to this Decree. "Work"
6 does not include the activities necessary for the implementation of the RAP for the Site.

7 16. "Work Oversight Costs" shall mean all costs incurred by the Plaintiffs
8 and their contractors after August 1, 1999 in Oversight of the Work. Work Oversight Costs
9 shall include: payroll costs, overhead costs, contractor costs, laboratory costs, the costs
10 incurred pursuant to Subsection VI.J (Site Access), and the costs of reviewing or developing
11 plans, reports and other items pursuant to this Consent Decree, verifying the Work, or costs
12 incurred to implement or enforce this Consent Decree, from and after August 1, 1999. Work
13 Oversight Costs include any such costs incurred by DTSC or its contractors or either of them,
14 including, but not limited to: (1) all costs incurred in preparation or oversight of the RI/FS and
15 RAP for the Site; and (2) all costs associated with the planning, implementation or oversight
16 of removal actions. Work Oversight Costs do not include any costs incurred by DTSC in
17 oversight of activities that are beyond the scope of this Decree. Activities that fall within the
18 scope of this Decree include the Work and any other activities necessary for the implementation
19 of this Decree.

20 V. GENERAL PROVISIONS

21 A. Purposes.

22 The purposes of this Consent Decree are:

23 1. Work.

24 To protect public health and welfare and the environment from releases
25 or threatened releases of Waste Material at or from the Site by the completion of the following
26 work:

- 27 (a) Design, implementation and operation of removal action(s)
28 necessary to minimize the spread of contaminants from the Site;

the parties contemplate that the removal action will include a soil vapor extraction and air sparging system; and

(b) Preparation of an RI/FS and a RAP for the Site;.

2. Resolution of Certain Claims.

To settle certain portions of the claims that the Plaintiffs have asserted against the Defendants in the I&SE Order and the Complaint filed in this matter.

B. Final Remedy.

The Parties agree that completion of the work required by this Decree may not constitute the final remedial action for the Site. DTSC reserves all of its rights to (i) compel Holchem, the Benjamin Defendants or any liable person to implement any final remedial action for the Site and (ii) seek recovery of any costs it incurs with respect to any final remedial action from Holchem, the Benjamin Defendants or any liable party.

C. Compliance With Applicable Law.

All activities undertaken by Holchem pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal, state and local laws and regulations, including the NCP. All parties agree that the Work, if performed in accordance with the requirements of this Decree, is consistent with the NCP.

D. No Findings By DTSC.

This Decree in no way constitutes a finding by DTSC as to the risks to human health or the environment which may be posed by contamination at the Site. This Decree does not constitute a representation by DTSC that the Site, or any part thereof, is fit for any particular purpose.

VI. GENERAL OBLIGATIONS RESPECTING WORK TO BE PERFORMED

A. Project Coordinator.

Within ten (10) days from the Effective Date of the Decree, Holchem shall submit to DTSC in writing the name, address, and telephone number of a Project Coordinator

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1 whose responsibilities will be to receive all notices, comments, approvals, and other
2 communications from DTSC. Holchem shall promptly notify DTSC of any change in the
3 identity of the Project Coordinator.

4 **B. Communication and Coordination Plan (CCP)**

5 Within thirty (30) days of the Effective Date of this Decree, Holchem shall
6 submit to DTSC for approval a Communication and Coordination Plan ("CCP") which specifies
7 the requirements and procedures by which Holchem will communicate and coordinate with the
8 owner(s) of the Facility premises in carrying out the requirements of this Decree.

9 **C. Project Engineer/Geologist.**

10 The Work performed pursuant to this Decree shall be under the direction and
11 supervision of a qualified professional engineer and/or a registered geologist in the State of
12 California, who shall have expertise in hazardous substance site cleanup including at least two
13 CERCLA RI/FS equivalent projects where remediation costs exceeded \$1,000,000. Within
14 forty-five (45) days from the Effective Date of the Decree, Holchem must submit for DTSC
15 review and approval: (a) the name(s) and address(es) of the project engineer and/or geologist
16 chosen by Holchem; and (b) in order to demonstrate their expertise in hazardous substance
17 cleanup, the resume(s) of the engineer and/or geologist, and the statement of qualifications of
18 the consulting firm responsible for the work. Holchem shall promptly notify DTSC of any
19 change in the identity of the Project Engineer and/or Geologist.

20 **D. Monthly Summary Reports.**

21 Within thirty (30) days from the Effective Date of the Decree, and every month
22 thereafter, Holchem shall submit a Monthly Progress Report of its activities under the
23 provisions of this Decree. The report shall be received by DTSC by the fourth day of the
24 month due and shall describe:

- 25 (1) Specific actions taken by or on behalf of Holchem during the previous
26 month;
27 (2) Actions expected to be undertaken during the current month;
28 (3) All planned activities for the next month;

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- 1 (4) Any requirements under this Decree that were not completed;
2 - (5) Any problems or anticipated problems in complying with this Decree;
3 and
4 (6) All results of sample analyses, tests, and other data generated under the
5 Decree during the previous month, and any significant findings from
6 these data.

7 After Holchem has established a satisfactory history of submission of Monthly
8 Progress Reports for a period of six months, it may begin to submit such reports on a quarterly
9 basis; DTSC, however, may at any time instruct Holchem to resume submission of such reports
10 on a monthly basis where the submission of monthly reports is necessary and appropriate under
11 the circumstances.

12 **E. Quality Control/Quality Assurance ("QC/QA").**

13 All sampling and analysis conducted by Holchem under this Decree shall be
14 performed in accordance with QC/QA procedures submitted by Holchem and approved by
15 DTSC pursuant to this Decree.

16 **F. Submittals.**

17 All submittals and notifications from Holchem required by this Decree shall be
18 sent to:

19 Mrs. Nennet V. Alvarez, Chief
20 Site Mitigation Cleanup Operations
21 Southern California Branch B
22 Department of Toxic Substances Control
23 Attention: Chase Chemical's Project Manager
24 1011 N. Grandview Avenue
25 Glendale, California 90201

26 and to such other persons as are determined by DTSC.

27 **G. Communications.**

28 All approvals and decisions of DTSC made regarding submittals and notifications
will be communicated to Holchem in writing by the Site Mitigation Cleanup Operations Branch
Chief, Department of Toxic Substances Control, or his/her designee. No informal advice,
guidance, suggestions or comments by DTSC regarding reports, plans, specifications, schedules

1 or any other writings by Holchem shall relieve Holchem of the obligation to obtain such formal
2 approvals as may be required.

3 **H. DTSC Review and Approval.**

4 If DTSC determines that any report, plan, schedule or other document submitted
5 for approval pursuant to this Decree fails to comply with this Decree or fails to protect public
6 health or safety or the environment, DTSC may:

- 7 (1) Modify the document as deemed reasonably necessary and approve the
8 document as modified; or
9 (2) Return written comments to Holchem with recommended changes and a
10 reasonable date by which Holchem is to submit to DTSC a revised
11 document incorporating the recommended changes.

12 Any modifications, comments or other directives issued pursuant to paragraph (1) above, are
13 incorporated into this Decree unless disputed by Holchem in accordance with the dispute
14 resolution provisions set forth in Section IX of this Decree (Dispute Resolution). Any
15 noncompliance with any unchallenged modifications or directives shall be deemed a failure or
16 refusal to comply with this Decree. DTSC will serve the Benjamin Defendants with copies of
17 any modifications, comments or directives issued pursuant to this Subsection H.

18 **I. Compliance With Applicable Laws.**

19 Holchem shall carry out this Decree in compliance with all applicable state,
20 local, and federal requirements including, but not limited to, requirements to obtain permits and
21 to assure worker safety.

22 **J. Site Access.**

23 To the extent access to the Site or laboratories used for analyses of samples under
24 this Decree is within the control of the Defendants, the Defendants shall provide access at all
25 reasonable times to employees, contractors, and consultants of DTSC. DTSC and its employees
26 are aware of the existence of the subject contamination at the Site and they are also aware that
27 the Site is used for the storage and distribution of various chemicals, hazardous substances and
28 hazardous materials. Accordingly, DTSC employees, contractors and consultants entering the

1 Facility will comply with any reasonable safety and security procedures provided to them by
2 Holchem. Nothing in this Section is intended or shall be construed to limit in any way the right
3 of entry or inspection that DTSC or any other agency may otherwise have by operation of any
4 law. DTSC and its authorized representatives shall have the authority to enter and move safely
5 about all property at the Site at all reasonable times for purposes of ensuring compliance with
6 this Consent Decree, including, but not limited to: inspecting records, operating logs, sampling
7 and analytic data, and contracts relating to this Site; reviewing the progress of Holchem in
8 carrying out the terms of this Decree; conducting such tests as DTSC may deem necessary; and
9 verifying the data submitted to DTSC by Holchem.

10 **K. Sampling, Data and Document Availability.**

11 Holchem shall permit DTSC and its authorized representatives to inspect and
12 copy all sampling, testing, monitoring or other data generated by Holchem or on Holchem's
13 behalf in any way pertaining to Work undertaken pursuant to this Decree. Holchem shall
14 submit all such data upon the request of DTSC. Copies shall be provided within seven (7) days
15 of receipt of DTSC's written request. Holchem shall inform DTSC at least seven (7) days in
16 advance of all field sampling under this Decree, and shall allow DTSC and its authorized
17 representatives to take duplicates of any samples collected by Holchem pursuant to this Decree.
18 Holchem shall maintain a central repository of the data, reports, and other documents prepared
19 pursuant to this Decree. DTSC shall make its public records file of Site reports, workplans,
20 comments, technical information and all related information concerning the Site available to
21 Holchem for its review and consideration, pursuant to DTSC Public Records Act procedures
22 or pursuant to any expedited procedures that may be agreed upon by the Holchem and DTSC.
23 DTSC understands that complete access to its public files for the Site is essential for Holchem
24 to initiate compliance with the conditions and requirements of this Decree. The Benjamin
25 Defendants shall permit Holchem, DTSC and their authorized representatives to inspect and
26 copy all sampling, testing, monitoring or other data generated by the Benjamin Defendants or
27 on their behalf in any way pertaining to any work undertaken pursuant to the I&SE Order or
28 this Consent Decree.

1 **L. Record Retention.**

2 All data, final reports and other documents prepared pursuant to this Decree shall
3 be preserved by Holchem for a minimum of six (6) years after the conclusion of all activities
4 under this Decree. If DTSC requests that some or all of these documents be preserved for a
5 longer period of time, Holchem shall either comply with that request or deliver the documents
6 to DTSC, or permit DTSC to copy the documents prior to destruction. Holchem shall notify
7 DTSC in writing, at least two (2) months prior to destroying any documents prepared pursuant
8 to this Decree.

9 **M. Government Liabilities.**

10 The State of California shall not be liable for any injuries or damages to persons
11 or property resulting from acts or omissions by Holchem, the Benjamin Defendants or related
12 parties specified in Subsection II.D (Parties Bound) in carrying out activities pursuant to this
13 Decree, nor shall the State of California be held as party to any contract entered into by
14 Holchem or its agents in carrying out activities pursuant to this Decree.

15 **N. Additional Actions.**

16 Except as expressly provided herein, by entering into this Decree, DTSC does
17 not waive the right to take any further actions authorized by law.

18 **O. Stop Work Order.**

19 In the event that DTSC determines that any activity (whether or not pursued in
20 compliance with this Decree) may pose an imminent or substantial endangerment to the health
21 or safety of people on the Site or in the surrounding area or to the environment, DTSC may
22 order Holchem to stop further implementation of such activity for such period of time needed
23 to abate the endangerment (hereafter "Stop Work Order"). In the event that DTSC determines
24 that any Site activities (whether or not pursued in compliance with this Decree) are proceeding
25 without DTSC authorization, DTSC may order Holchem to stop further implementation of such
26 Site activity for such period of time needed to obtain DTSC authorization, if such authorization
27 is appropriate. Any deadline in this Decree directly affected by a Stop Work Order, under this
28 Subsection, shall be extended for the term of the Stop Work Order.



1 **P. Emergency Response Action/Notification.**

2 - In the event of any action or occurrence, such as a fire, earthquake, explosion,
3 or human exposure to hazardous substances caused by the release or threatened release of a
4 hazardous substance at the Site, during the course of this Decree, Holchem shall immediately
5 take all appropriate action to prevent, abate, or minimize such emergency, release, or
6 immediate threat of release and shall immediately notify the Project Manager. Holchem shall
7 take such action in consultation with the Project Manager and in accordance with all applicable
8 provisions of this Decree. Within seven (7) days of the onset of such an event, Holchem shall
9 furnish a report to DTSC, signed by Holchem's Project Coordinator, setting forth the events
10 which occurred and the measures taken in the response thereto. In the event that Holchem fails
11 to take appropriate response action and DTSC takes the action instead, DTSC may seek to
12 recover the costs of its response action from Holchem. Nothing in this Section shall be
13 deemed to limit any other notification requirement to which Holchem may otherwise be subject
14 by operation of law.

15 **Q. Extension Requests.**

16 If Holchem is unable to perform any activity or submit any document within the
17 time required under this Decree, Holchem may, prior to expiration of the time, request an
18 extension of the time in writing. The extension request shall include a justification for the
19 delay. All such requests shall be in advance of the date on which the activity or document is
20 due, and all reasonable requests for extensions shall be granted.

21 **R. Extension Approvals.**

22 If DTSC determines that good cause exists for an extension, it will grant the
23 request and specify a new schedule in writing. Holchem shall comply with the new schedule
24 incorporated in this Decree.

25 **VII. SPECIFIC WORK TO BE PERFORMED**

26 **A. Site Remediation Strategy.**

27 Work to be performed at the Site under this Decree shall include :

- 28 (1) implementation of any removal actions necessary to minimize, to the extent practicable,

1 the off-Site migration of hazardous substances presently on the Site and to reduce, to the
2 extent practicable, on-Site levels of hazardous substances; the parties contemplate that
3 these removal actions will consist of (i) installation of a soil vapor extraction system,
4 and (ii) installation of an air sparging system;

5 (2) completion of an RI/FS;

6 (3) preparation of a RAP; and

7 (4) assisting DTSC with the preparation of any necessary California Environmental Quality
8 Act ("CEQA") documents for response actions to be performed at the Site.

9 Holchem, in conjunction with DTSC, shall develop an overall Site investigation and
10 remediation strategy which reflects program goals, objectives, and requirements as specified
11 in the Statement of Work ("SOW"), attached hereto as Exhibit A, and incorporated herein by
12 this reference. Current knowledge of Site contamination sources, exposure pathways, and
13 receptors shall be used in developing this strategy.

14 An objective of the Site investigations shall be to identify immediate or potential
15 risks to public health and the environment and prioritize and implement response actions using
16 removal actions and operable units, if appropriate, based on the relative risks at the Site.
17 Holchem and DTSC shall develop and, if necessary, modify Site priorities throughout the
18 course of the investigations.

19 **B. Removal Actions.**

20 Holchem shall undertake the removal action described in Subsection V.A.1(a)
21 of this Decree, as detailed below in this Subsection VII.B. Prior to the implementation of this
22 removal action, Holchem shall submit a removal action workplan, including an implementation
23 schedule for DTSC's review and approval. Implementation of the removal action shall be
24 completed by the specified dates:

25 **1. Fence and Post.**

26 Holchem shall maintain the perimeter fencing and warning signs that have
27 been installed at the Site except as the same may be modified with the written approval of
28 DTSC.



1 **2. Groundwater Monitoring of Existing Wells.**

2 Within thirty (30) days from the Effective Date of this Decree, Holchem
3 shall begin interim regional and local groundwater monitoring including groundwater level
4 measurements using the existing wells. Groundwater level measurements and groundwater
5 sampling shall be conducted on a quarterly basis. A groundwater sampling report shall be
6 submitted to DTSC by the 15th of the month following the end of the quarter. As data is
7 gathered, DTSC may require the need for additional groundwater wells on or off the Property.
8 Any dispute as to the need for such wells shall be subject to the dispute resolution procedures
9 of Section IX of this Decree (Dispute Resolution).

10 **3. Soil Vapor Extraction and Air Sparging System.**

11 Within ten (10) days after the date that this Decree is signed by the
12 Parties, Holchem shall prepare and submit to DTSC a Removal Action Workplan ("RAW")
13 providing for the implementation of removal actions necessary to minimize, to the extent
14 practicable, the off-Site migration of hazardous substances from the Site and to reduce, to the
15 extent practicable, on-Site levels of hazardous substances; the parties contemplate that these
16 removal actions will consist of soil vapor extraction and air sparging ("SVE/AS") systems.
17 On approval of the RAW, Holchem shall install and operate the SVE/AS system in accordance
18 with the terms of the approved RAW.

19 **4. Removal of USTs.**

20 In anticipation of the execution of this Decree, Holchem provided DTSC
21 with a RAW providing for removal of the USTs. On approval of that RAW, Holchem removed
22 the USTs in accordance with the terms of the RAW, as amended to reflect the comments issued
23 by DTSC, and consistent with the requirements of the Los Angeles Fire Department.

24 **5. Additional Removal Actions.**

25 DTSC and Holchem may agree on the need for removal actions in
26 addition to the removal action specified in Subsection V.A.1(a). DTSC may require Holchem
27 to perform additional removal actions if: (i) such actions are necessitated by an imminent and
28 substantial endangerment to the public health or the environment not otherwise addressed by

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1 this Decree, and (ii) such actions are properly conducted as removal actions rather than as part
2 of the remedial action proposed by the RAP. Any requirement that Holchem perform such
3 additional removal actions shall be subject to the dispute resolution procedures of Section IX
4 (Dispute Resolution).

5 **C. Public Participation Plan ("PPP") (Community Relations).**

6 Holchem shall work cooperatively with DTSC in ensuring that the public and
7 affected community are involved in DTSC's decision-making process. Any such public
8 participation activities shall be conducted in accordance with H&SC Section 25356.1(d),
9 DTSC's Public Participation Policy and Guidance Manual, and with DTSC's review and prior
10 approval. The Benjamin Defendants previously submitted a PPP to DTSC. Holchem will
11 submit a revised PPP to DTSC within 30 days of the Effective Date of this Consent Decree.
12 Subsequent modifications of the PPP may be made on the agreement of DTSC and Holchem.
13 The SOW, attached as Exhibit A, sets forth in further detail the requirements of the existing
14 PPP.

15 **D. Remedial Investigation/Feasibility Study (RI/FS).**

16 Holchem shall complete an RI/FS for the Site. The RI/FS shall be consistent
17 with the U.S. EPA's "Guidance for Conducting Remedial Investigations and Feasibility Studies
18 under CERCLA," October 1988, and "Data Quality Objectives for Remedial Response
19 Activities", March 1987 and any updated guidance documents. The purpose of the RI/FS is
20 to assess Site conditions, to fully characterize the nature and extent of the Site's hazardous
21 substance contamination, and to evaluate alternatives to the extent necessary to select a remedy
22 appropriate for the Site. RI and FS activities shall be conducted concurrently and interactively
23 so that the investigation and permanent remedy, respectively, can be completed and selected
24 expeditiously. Because of the iterative nature of the RI/FS, additional data requirements and
25 analyses may be identified throughout the process. Site characterization may be conducted in
26 one or more phases to focus sampling efforts and increase the efficiency of the investigation.
27 Holchem shall fulfill additional data and analysis needs identified by DTSC as necessary to
28 complete the RI/FS; these additional data and analysis requests will be consistent with the

1 general scope and objectives of the Decree.

2 The following RI/FS components shall be performed as detailed in the SOW attached
3 as Exhibit A.

4 **1. RI/FS Workplan.**

5 Within sixty (60) days from the Effective Date of this Decree, Holchem
6 shall prepare and submit to DTSC for review and approval a detailed RI/FS Workplan and
7 implementation schedule which covers all activities necessary to conduct a complete RI/FS of
8 the Site. The SOW details the requirements for the RI/FS Workplan.

9 **2. RI/FS Workplan Implementation.**

10 Holchem shall implement the approved RI/FS Workplan.

11 **3. RI/FS Workplan Revisions.**

12 If Holchem proposes to modify any methods or initiate new activities for
13 which a Field Sampling Plan, Health and Safety Plan, Quality Assurance Project Plan or other
14 necessary procedures/plans have been established, Holchem shall prepare an addendum to the
15 approved plan(s) for DTSC review and approval prior to modifying the method or initiating
16 new activities.

17 **E. Interim Screening & Evaluation of Remedial Technologies.**

18 At the request of DTSC, Holchem shall submit an interim screening and
19 evaluation document which identifies and evaluates potentially suitable remedial technologies
20 and recommendations for treatability studies.

21 **F. Treatability Studies.**

22 Treatability testing shall be performed by Holchem to develop data for the
23 detailed remedial alternatives set forth in the RI/FS. Treatability testing is required to
24 demonstrate the implementability and effectiveness of technologies, unless Holchem can show
25 DTSC that similar data or documentation or information exists. The required deliveries are:
26 a workplan, a sampling and analysis plan, and a treatability evaluation report. To the extent
27 practicable, treatability studies will be proposed and implemented during the latter part of Site
28 characterization.

1 **G. Remedial Investigation (RI) Report.**

2 Holchem shall prepare the RI Report and submit it to DTSC for review and
3 approval in accordance with the approved RI/FS Workplan Schedule. The purpose of the RI
4 is to collect data necessary to adequately characterize the Site for the purpose of defining risks
5 to public health and the environment and developing and evaluating effective remedial
6 alternatives. Site characterization may be conducted in one or more phases to focus sampling
7 efforts and increase the efficiency of the investigation. The SOW in Exhibit A details the
8 requirements for the RI Report.

9 **H. Baseline Risk Assessment.**

10 Holchem shall submit a Baseline Risk Assessment Report within sixty (60) days
11 from the approval of the RI Report. The report shall be prepared consistently with U.S. EPA
12 and DTSC regulations and guidance documents, including at a minimum: "Risk Assessment
13 Guidance for Superfund, Volume 1; Human Health Evaluation Manual, December 1989";
14 "Superfund Exposure Assessment Manual, April 1988"; and "Risk Assessment Guidance for
15 Superfund, Volume 2, Environmental Evaluation Manual, March 1989" and any updates to
16 those documents. The SOW, attached as Exhibit A, details the requirements for the Baseline
17 Risk Assessment Workplan & Report.

18 **I. Feasibility Study ("FS") Report**

19 Holchem shall prepare the FS Report and submit it to DTSC for review and
20 approval no later than sixty (60) days from the date DTSC approves the RI Report. The SOW
21 in Exhibit A, details the requirements for the FS Report.

22 **J. California Environmental Quality Act ("CEQA").**

23 DTSC must comply with CEQA insofar as activities required by this Decree are
24 "projects" requiring CEQA compliance. The SOW, attached as Exhibit A, sets forth in further
25 detail the requirements of CEQA and the obligations of Holchem in this regard.

26 **K. Remedial Action Plan ("RAP").**

27 No later than sixty (60) days after DTSC approval of the FS Report, Holchem
28 shall prepare a draft RAP and submit it to DTSC. The draft RAP shall be consistent with the

1 NCP and H&SC Section 25356.1, et seq. The draft RAP public review process may be
2 combined with that of any other documents required by CEQA. The draft RAP shall be based
3 on and summarize the approved RI/FS Report, and shall clearly set forth all of the items listed
4 in the SOW attached as Exhibit A.

5 **VIII. PAYMENT OF DTSC COSTS**

6 **A. Past Response Costs.**

7 With respect to all costs and expenses which the Plaintiffs have incurred relating
8 to the Site prior to and up until August 1, 1999 ("Past Response Costs"), which costs are
9 described in Appendix B, attached hereto, the Defendants shall pay DTSC \$115,000.00. As
10 between defendants, Holchem shall pay \$80,000.00 of this amount and Benjamin shall pay
11 \$35,000.00. These payments shall be made as follows:

12 Within thirty (30) days of the Effective Date, the Defendants shall pay the
13 amounts owed for Past Response Costs (\$115,000.00) by checks payable to the California
14 Department of Toxic Substances Control and referring to the "Chase Chemical Site." The
15 checks should be sent to:

16 California Department of Toxic Substances Control
17 Attention: Accounting Unit
18 Chase Chemical Site, Project No. 300593
P.O. Box 806
Sacramento, California 95812-0806

19 A copy of the transmittal letters and a copy of the checks shall be sent to the Project
20 Coordinator and DTSC's Project Manager and to Deputy Attorney General Sarah Morrison.

21 **B. Work Oversight Costs.**

22 DTSC will provide Holchem with an accounting of all Work Oversight Costs as
23 they accrue. DTSC will provide quarterly bills for those Work Oversight Costs incurred in a
24 manner that is not inconsistent with the NCP.

25 Holchem may provide notice of any challenge to the quarterly bill for Work
26 Oversight Costs by letter mailed to DTSC and within thirty (30) days after Holchem receives
27 the quarterly bill. The challenge will then be subject to the dispute resolution provisions of this
28 Decree.

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1 Unless challenged by Holchem, Holchem shall pay the Work Oversight Costs
2 that are not inconsistent with the NCP by check within thirty (30) days after receipt of the Bill.

3 The check shall be disbursed to:

4 California Department of Toxic Substances Control
5 Attention: Accounting Unit
6 Chase Chemical Site, Project No. 300593
P.O. Box 806
Sacramento, California 95812-0806

7 A copy of the transmittal letter and a copy of the check shall be sent to the Project Coordinator
8 and DTSC's Project Manager at the address specified in Subsection VI.F (Submittals), and to
9 Deputy Attorney General Sarah Morrison.

10 **IX. DISPUTE RESOLUTION**

11 **A. Informal Dispute Resolution.**

12 Should Holchem object to any DTSC decision pursuant to this Decree, Holchem
13 shall notify DTSC of its objections, in writing, within thirty (30) days after receipt of the
14 decision. For the purpose of this Subsection, DTSC decisions do not include deadlines for
15 submission of documents pursuant to this Decree. Within fifteen (15) days from submission
16 of such written objections, DTSC and Holchem shall meet and confer in an attempt to reach
17 agreement. At the end of this discussion period or any time after meeting or conferring with
18 Holchem, DTSC shall provide a written statement of its decision to Holchem. That statement
19 shall be considered the final decision of DTSC, unless Holchem seeks review under the Formal
20 Dispute Resolution procedures, when such procedures apply. Nothing in this Subsection should
21 be construed as altering or limiting Holchem's rights to challenge or bring any otherwise legally
22 authorized challenge to any DTSC determination.

23 **B. Formal Dispute Resolution.**

24 **1. Limitations.**

25 Formal dispute resolution under this Subsection IX.B, including any
26 dispute regarding any final document, is exclusively limited to disputes regarding the provisions
27 described in Sections VII (Specific Work to be Performed); VIII (Payment of DTSC Costs); and
28 XIV (Force Majeure); Subsection VI.H (DTSC Review and Approval); and Subsection X.A

1 (Satisfaction by Holchem). Formal dispute resolution shall proceed as described in the
2 following Subsection (IX.B.2).

3 **2. Further Challenge by Holchem.**

4 If Holchem disagrees with any action or omission of DTSC in respect to
5 any issue within the scope of Subsection IX.B.1, Holchem may submit, within thirty (30) days
6 after completion of the informal resolution process set forth in Subsection IX.A (Informal
7 Dispute Resolution), such action for review by the Deputy Director of Site Mitigation,
8 Department of Toxic Substances Control, (the "Arbiter") or, in the Deputy Director's extended
9 absence, the Deputy Director's designee. The Arbiter shall receive written evidence and
10 testimony concerning the action or omission by DTSC, and shall determine whether such action
11 is reasonably necessary or appropriate in light of the overall objectives of this Decree. The
12 Arbiter shall issue a written decision affirming the action of DTSC, setting aside the action of
13 DTSC, or amending the action of DTSC, as appropriate. The Arbiter's written decision shall
14 set forth the reasons for the ruling. The Arbiter shall render all decisions in accordance with
15 applicable state and federal laws. The Arbiter's decision shall be the final decision of DTSC
16 and shall become binding unless Holchem seeks review by this Court as provided in the
17 following paragraph.

18 **3. Review by This Court.**

19 Any administrative decision by the Arbiter respecting administrative
20 dispute resolution, as described above, shall be reviewable by this Court, provided that
21 Holchem files a notice of judicial appeal with the Court and serves it on DTSC within thirty
22 (30) days of receipt of the decision of the Arbiter. Judicial review shall be limited to the
23 administrative record as a whole. The notice of judicial appeal shall include a description of
24 the matter in dispute, the efforts made by the parties thereto to resolve it, and the relief
25 requested. Within thirty (30) days of DTSC's receipt of such notice or within the schedule set
26 forth by the Court, DTSC may file a response to Holchem's notice of judicial appeal. Unless
27 use of some other standard of review is required by the law which applies to the disputed matter
28 that is before the Court, Holchem will have the burden of proving based on the weight of the

1 evidence in the administrative record as a whole (1) that the Arbiter's decision was not
2 supported by the weight of the evidence in the administrative record or was otherwise not
3 consistent with State or Federal law, or (2) when the Arbiter's decision involves DTSC's
4 response or oversight costs, that the costs incurred by DTSC were not consistent with the NCP
5 or were otherwise not in accordance with State or Federal law.

6 **C. Holchem's Work Obligations During Dispute Resolution.**

7 Notwithstanding the invocation of the procedures stated in this Section, Holchem
8 shall continue to perform its undisputed obligations under this Consent Decree, including those
9 that are not disputed or not substantially affected by the disputed issue.

10 **D. Obligations After Resolution of Dispute.**

11 If the Court finds that Holchem has not satisfied its burden as described in
12 Subsection IX.B.3 (Review by This Court), Holchem shall then fulfill its obligation to pay costs
13 or implement the disputed matter as resolved and perform the work which was the subject of
14 the dispute in accordance with the Court's decision. The appropriate plans should be amended
15 to reflect the resolution of the dispute. In any dispute in which Holchem prevails, the deadlines
16 for any affected deliverables shall be extended to account fully for any delays attributable to the
17 dispute resolution procedures and Holchem need only comply with any disputed obligations as
18 finally determined by the Court.

19 **X. SATISFACTION AND CERTIFICATION**

20 **A. Satisfaction by Holchem.**

21 If Holchem fulfills its obligations by performing the activities required under this
22 Decree, Holchem's obligations for the Work required under this Decree shall be deemed to be
23 satisfied. Within sixty (60) days after DTSC determines that Holchem has fulfilled its
24 obligations under this Decree, DTSC will issue Holchem a statement that the Work required
25 of Holchem pursuant to this Decree has been completed (Statement of Completion) and that no
26 further action or work is required of Holchem pursuant to this Consent Decree. Upon the
27 Effective date of this Consent Decree, and for so long as Holchem is in full compliance with
28 the terms of this Decree, and then after the issuance of the Statement of Completion, Holchem,

1 the Holchem Related Parties, and the Benjamin Defendants shall be protected by the covenants
2 not to sue in Subsection XI (Covenants Not to Sue).

3 **B. Preparation of New RAP.**

4 Notwithstanding the other provisions of this Decree, if, after the completion of
5 the RAP, new facts are discovered which, either by themselves or in combination with other
6 facts, indicate that the RAP is not effective in mitigating the contamination present at the Site
7 or is not protective of human health and the environment, then DTSC may seek to compel the
8 Defendants to prepare a new RAP; the Defendants, however, reserve the right to contest the
9 need for a new RAP and to present any other defenses they may have including, without
10 limitation, the right to deny liability or responsibility for the preparation or implementation of
11 the new RAP.

12 **XI. COVENANTS NOT TO SUE**

13 **A. Covenants Not to Sue.** In consideration of the actions that will be
14 performed and the payments that will be made by the Defendants under the terms of this
15 Consent Decree, and except as specifically provided for in this Section, the Plaintiffs covenant
16 not to sue or to take administrative action against the Benjamin Defendants, Holchem or the
17 Holchem Related Parties, pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606
18 and 9607, Sections 3008(h), 3013 or 7003 of RCRA, 43 U.S.C. §§ 6928(b), 6934 or 6973,
19 or H&SC §§ 25100, et seq., 25300, et seq., or any other federal or state statute or common law
20 relating to:

- 21 (1) the Work,
22 (2) Past Response Costs,
23 (3) Work Oversight Costs.

24 With respect to the Plaintiffs' claims for Past Response Costs, the covenant not
25 to sue shall take effect upon the receipt by DTSC of the \$115,000 payment required by
26 Subsection VIII.A (Past Response Costs). The remaining covenants not to sue are
27 conditioned upon the performance by Holchem of all its obligations under this Consent Decree
28 but shall take effect on the effective date of this Consent Decree, and shall continue so long as

1 Holchem complies with the terms of this Decree. These covenants not to sue shall become
2 permanently binding upon the issuance of the Statement of Completion described in Section
3 X.A (Satisfaction by Holchem).

4 B. The I&SE Order. By entering into this Consent Decree, the parties
5 agree as follows: (1) the I&SE Order is withdrawn, (2) any obligations imposed upon the
6 Defendants under the I&SE Order are replaced and superseded by the requirements of this
7 Decree, (3) DTSC will not seek penalties, costs or attorneys' fees as a result of any past
8 violations of the I&SE Order, and (4) DTSC reserves the right to reissue the Order under the
9 circumstances detailed in Section XII of this Decree (Reservation of Rights).

10 C. Limitations on Covenants Not to Sue. The Defendants are not released
11 from any matter not expressly addressed by this Consent Decree, and they are not released
12 from the following claims:

13 1. Any claim based on a failure by Holchem or the Benjamin
14 Defendants to meet the obligations of this Consent Decree;

15 2. Claims based on the liability of Holchem or the Benjamin
16 Defendants arising from the past, present, or future disposal of Waste Materials at
17 disposal sites other than the Site;

18 3. Claims based on criminal liability; at present, however, Plaintiffs
19 have no pending criminal investigation against either Holchem or the Benjamin
20 Defendants.

21 4. Claims based on liability for Waste Materials removed from the
22 Site;

23 5. Liability for any violations of federal or state law which occur
24 during implementation of the Work.

25 6. Rights reserved by the Plaintiffs in Section XII (Reservation of
26 Rights).

27 7. Claims based on response, remedial or cleanup measures that are
28 undertaken or costs that are incurred at the Site after the approval of the RAP, unless

1 Defendants have completed such measures or incurred such costs with the approval of
2 DTSC within the scope of this Consent Decree.

3 8. Claims based on the response actions undertaken or costs incurred
4 in order to implement the RAP or any other legally appropriate remedial action for the
5 Site, unless Defendants have completed such actions or incurred such costs within the
6 scope of this Consent Decree.

7 D. Nothing in this Consent Decree shall constitute or be construed as a
8 release or covenant not to sue regarding any claim or cause of action against any person as
9 defined in Section 101(21) of CERCLA or H&SC § 25319, other than Plaintiffs, the Benjamin
10 Defendants, Holchem and the Holchem Related Parties, for any liability it may have arising out
11 of or relating to the Site.

12 E. Except as otherwise provided in this Decree, Plaintiffs, the Defendants,
13 and the Holchem Related Parties expressly reserve all rights and defenses that they may have.

14 F. Nothing in this Decree shall be deemed to limit the response authority of
15 the Plaintiffs under H&SC § 25358.3 or under any other response authority, except to the
16 extent that Defendants have a covenant not to sue under this Section.

17 G. The Defendants hereby covenant not to sue Plaintiffs and agree not to
18 assert any claims or causes of action against Plaintiffs arising out of any prior acts or omissions
19 or oversight activities of Plaintiffs with respect to the Site, including but not limited to:

20 1. Any direct or indirect claim for reimbursement from the
21 Hazardous Waste Control Account, Hazardous Substance
22 Account, the Site Remediation Account or the Hazardous
23 Substance Cleanup Fund or any successor fund through H&SC
24 Section 25375 or any other provision of law.

25 2. Any claims against the Plaintiffs under CERCLA §§ 107 or 113
26 for any prior acts, oversight activities or alleged omissions by
27 DTSC related to the Site.

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1 3. Any claims against the Plaintiffs arising out of prior response
2 activities, oversight activities or omissions by DTSC at the Site,
3 including but not limited to nuisance, trespass, takings or
4 equitable indemnity and indemnity under California law,
5 contribution under California or federal law, and negligence or
6 strict liability under California or federal law. In the event that
7 any past, present or future employee of DTSC brings an action
8 against Holchem or the Benjamin Defendants and that action (i)
9 is brought in the employee's personal rather than official capacity
10 and (ii) seeks recovery for the employee personally rather than
11 on behalf of the State, then the provisions of this paragraph 3
12 shall not bar Defendants from bringing any cross claims that (i)
13 arise directly from the transaction(s) or occurrence(s) that form
14 the basis for the employee's action and (ii) can properly be
15 brought as cross claims in the employees' action. Nothing in the
16 foregoing sentence is intended to waive any defense or immunity
17 that DTSC or its employees may have under State or Federal
18 law.

19 4. Any claims arising out of DTSC's issuance of the I&SE Order.

20
21 Nothing in this Decree shall be construed to limit, impair, or prejudice any tort or governmental
22 immunities available to Plaintiffs under applicable law for its oversight activities at the Site
23 under this Decree.

24 **XII. RESERVATIONS OF RIGHTS**

25 A. Except as otherwise provided in this Consent Decree, the Defendants
26 expressly reserve any and all rights, including, but not limited to, rights of contribution or
27 indemnification for all costs, losses, liabilities and damages incurred by any of them in
28 connection with the Site, or for complying with the requirements of this Consent Decree.

1 B. In the event DTSC initiates any legal proceedings against the Defendants
2 for non-compliance with this Consent Decree, the Defendants shall not contest their obligation
3 to comply with this Consent Decree in any motion brought by DTSC solely to enforce this
4 Consent Decree; the Defendants, however, expressly reserve all other rights and defenses with
5 respect to any such proceeding or any other cause of action or proceeding.

6 C. Nothing in this Consent Decree is intended or shall be construed to limit
7 the rights of Plaintiffs or Defendants with respect to claims arising out of or relating to the
8 deposit, release or disposal of hazardous substances at any location other than the Site subject
9 to this Decree.

10 D. DTSC retains all of its legal and equitable rights against all persons,
11 except as otherwise provided in this Decree. The legal and equitable rights retained by DTSC
12 include, but are not limited to, the right to compel any person, other than the Defendants or the
13 Holchem Related Parties, to take response actions for hazardous substance contamination at the
14 Site and to seek reimbursement against such persons for any past, present or future costs
15 incurred by DTSC with respect to the Site.

16 E. Notwithstanding any other provision of this Decree, DTSC reserves the
17 right to assert, and any covenants not to sue in this Decree shall not apply with respect to, any
18 claims or causes of action against the Benjamin Defendants, Holchem and/or the Holchem
19 Related Parties, either administrative or judicial, arising from any of the following:

- 20 1. The disposal of any hazardous substances, pollutant, or
21 contaminant at the Site in the future;
- 22 2. Interference with the remediation of the Site and any failure of
23 the Benjamin Defendants, Holchem or the Holchem Related
24 Parties to cooperate, as required by the terms of this Decree,
25 with DTSC, its employees, agents, contractors or other
26 authorized entities conducting response activities under DTSC
27 direction or oversight at the Site;

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3. Future transportation and disposal of hazardous substances from the Site;
4. Conduct that exacerbates any hazardous substance pollution at the Site including, but not limited to the exacerbation of the contamination existing at the Site as of the Effective Date of this Decree;
5. Claims based on failure of the Benjamin Defendants, Holchem or the Holchem Related Parties to meet a requirement of this Decree.

F. This Decree does not address any liability that the Defendants may have to implement any unperformed element of the remedy that is identified for the Site in the RAP. Notwithstanding any other provision of this Decree, DTSC expressly reserves the right to take any action, administrative or judicial, necessary to compel the Defendants or the Holchem Related Parties to:

1. implement any remedial, response or cleanup activity that is identified for the Site in the final RAP and that Holchem has not implemented pursuant to this Decree;
2. implement any other remedial or response action, other than the Work, where new facts have been discovered with respect to the existence of presently unknown or unsuspected contamination at the Site, and these facts justify such other remedial or removal action,
3. implement any portion of the final remedy for the Site that Holchem has not implemented pursuant to the terms of this Decree; or

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4. pay any unrecovered costs that are not inconsistent with the NCP (or other then-applicable law) which are associated with (i) the implementation of the RAP or the final remedy for the Site or (ii) Holchem's failure to comply with the terms of this Decree.

5 G. The parties recognize and acknowledge that the settlement embodied in
6 this Decree is only a partial resolution of the claims raised in the Complaint and issues
7 otherwise related to the remediation of conditions at the Site. The Defendants hereby waive
8 any defenses of res judicata, collateral estoppel, equitable estoppel, laches and claim-splitting
9 based on the existence of this Decree, only with respect to DTSC's rights to pursue subsequent
10 litigation regarding the responsibility of the Defendants for Site work and costs not covered by
11 this Decree.

12 XIII. CONTRIBUTION PROTECTION

With regard to claims for contribution against Holchem, the Holchem Related Parties and/or the Benjamin Defendants for matters addressed in this Consent Decree, the Parties agree, and the Court finds as follows:

15
16 A. This Consent Decree constitutes a judicially approved settlement within
17 the meaning of CERCLA § 113(f)(2) 42 U.S.C. § 9613(f)(2)..

B. This Consent Decree requires that Holchem pay certain costs and undertake certain response actions at the Site. This Decree also requires the Benjamin Defendants to pay certain costs, and in the Private Settlement Agreement the Benjamin Defendants and their insurers have agreed to fund a portion of the response actions to be performed by Holchem pursuant to this Decree. Accordingly, except as provided in Sections XI.B (Limitations on Covenants Not to Sue) and XII (Reservation of Rights), upon fulfillment of the obligations imposed upon them by this Decree, the Defendants will have resolved their liability to Plaintiffs for the following matters:

- 26 1. Plaintiffs' Past Response Costs;
27 2. Plaintiffs' Work Oversight Costs; and
28 3. The Work.

1 C. The Defendants and the Holchem Related Parties are entitled to the
2 Contribution Protection provided by CERCLA § 113(f)(2), 42. U.S.C. Section 9613(f)(2), for
3 the "matters addressed" in this Consent Decree. —

4 D. The "matters addressed" in this Consent Decree include (1) the Work,
5 (2) Past Response Costs; (3) Work Oversight Costs; (4) any costs incurred by any person with
6 respect to the Work, Past Response Costs, and/or Work Oversight Costs; (5) any response costs
7 incurred by any person, prior to or during the time that Holchem is timely completing the Work
8 in compliance with this Decree, with respect to any hazardous substances, pollutants or
9 contaminants on, under, or migrating to or from the Facility, and (6) response actions
10 performed at the Site prior to the Effective Date of this Decree. The matters that are not
11 included in the "matters addressed" in this Consent Decree include: (i) those matters reserved
12 in Subsection XI.B (Limitations on Covenants Not to Sue) and (ii) those matters reserved in
13 Section XII (Reservation of Rights) of this Decree.

14 E. Nothing in this Section shall limit the Plaintiffs' rights against any third
15 person or entity that is not a party to this Decree, including, without limitation, DTSC's right
16 to enforce a cleanup of the Site and to recover any response costs associated with that cleanup.

17 XIV. FORCE MAJEURE

18 Holchem shall cause all Work to be performed within the time limits set forth
19 in this Decree unless an extension is approved or performance is delayed by events that
20 constitute an event of force majeure. For purposes of this Decree, an event of force majeure
21 is an event arising from circumstances beyond the control of Holchem that delays performance
22 of any obligation under this Decree, provided that Holchem has undertaken all appropriate
23 planning and prevention measures to avoid any foreseeable circumstances. Increases in cost
24 of performing the Work specified in this Decree shall not be considered circumstances beyond
25 the control of Holchem. For purposes of this Decree, events which constitute a force majeure
26 shall include, without limitation, events such as acts of God, war, civil commotion, unusually
27 severe weather, labor difficulties, shortages of labor, materials or equipment, government
28 moratorium, delays in obtaining necessary permits due to action or inaction by third parties.

1 earthquake, fire, flood or other casualty. In addition, any unavoidable delay in obtaining the
2 right of access for Holchem to the Site or any off-Site area shall also constitute an event of force
3 majeure. Delay caused by an event of force majeure shall be deemed not to be a violation of
4 this Decree, and this delay shall not be counted in determining the time during which such work
5 shall be completed, or such act performed, whether such time be designated by a fixed date,
6 a fixed time or a reasonable time, and such time shall be deemed to be extended for the
7 effective period of delay equal to the actual days lost attributable to the effect of the event of
8 force majeure. Holchem shall notify DTSC in writing immediately after the occurrence of the
9 force majeure event. Such notification shall describe the anticipated length of the delay, the
10 cause or causes of the delay, the measures taken and to be taken by Holchem to minimize the
11 delay and the timetable by which these measures will be implemented. If DTSC does not agree
12 that the delay is attributable to a force majeure, then the matter may be subject to the dispute
13 resolution procedures set forth in Section IX of this Decree (Dispute Resolution).

14 **XV. NO ADMISSION OF LIABILITY - INADMISSIBILITY OF THIS DECREE**

15 The actions undertaken by Holchem or the Benjamin Defendants in accordance
16 with this Consent Decree do not constitute an admission of liability for any purpose by
17 Defendants, nor do they constitute a waiver of any rights or claims that Holchem may have
18 against any other party or person, except as otherwise provided in this Consent Decree with
19 respect to claims against the Plaintiffs. Neither this Consent Decree nor any drafts of this
20 Decree are to be introduced as evidence in any other proceeding for the purposes of establishing
21 any alleged liability with respect to the Site on the part of the Defendants.

22 **XVI. FUTURE SETTLEMENTS**

23 Holchem contends that it has no liability for the claims asserted in the Complaint
24 and that it is paying more than its alleged fair share of the response costs incurred or to be
25 incurred in connection with the Site. DTSC agrees that it will notify Holchem of negotiations
26 with any other party that is potentially liable for the cleanup of the contamination at the Site and
27 that it will permit Holchem to participate in such negotiations to the extent that the negotiations
28 may lead to a proposed consent decree or settlement agreement that may adversely affect the

1 rights of Holchem to recover response costs or obtain contribution for costs that Holchem
2 incurs pursuant to this Decree. As part of this process, DTSC nonetheless reserves the right
3 to meet and negotiate in confidence with any other potentially responsible party. In reaching
4 any such future settlement, DTSC shall take into account (1) the comparative legal
5 responsibility of the settling party for causing the contamination of the Site; and (2) the assets
6 and other sources of funds available to the future settling party that can be committed to the
7 cleanup of the Site, including, without limitation, potentially applicable insurance coverage, and
8 (3) other appropriate factors.

9 Plaintiffs and Holchem agree that any funds received by Plaintiffs from any other
10 persons as a result of any administrative consent order, consent decree, or similar settlement
11 with respect to the Site, shall be used only for the following purposes (1) to reimburse DTSC
12 and other governmental agencies for unreimbursed costs they have incurred or will incur at the
13 Site that are not inconsistent with the NCP; (2) to fund cleanup and investigatory work needed
14 at the Site that has not been successfully undertaken by Holchem or other parties, or (3) to
15 fund, to the extent permitted by law, an interest bearing, site-specific account, which shall be
16 used to pay for assessment, monitoring or cleanup work at the Site that is not inconsistent with
17 the NCP, including, without limitation, the implementation of the final remedy for the Site.

18 **XVII. CLAIMS AGAINST OTHER PERSONS**

19 Nothing in this Consent Decree shall in any way constitute a waiver or release
20 of any claims and rights that Plaintiffs or the Defendants have or may have against any
21 potentially responsible party for the Site, and Plaintiffs and Defendants reserve any and all
22 rights they have or may have against any prior owner and/or operators of the Site, and/or any
23 other potentially responsible parties, including Polyester Chemical or any other potentially
24 responsible party.

25 **XVIII. FULL AND COMPLETE DECREE**

26 This Consent Decree supersedes any and all prior agreements, either oral or in
27 writing, between Plaintiffs, on the one hand, and the Defendants, on the other hand, with
28 respect to the Site. This Decree contains all of the covenants and agreements between Plaintiffs

1 on the one hand and the Defendants on the other, with respect to the Site, and Plaintiffs and the
2 Defendants acknowledge that no representation, inducement, promise or agreement has been
3 made by or on behalf of any of the Parties except those covenants and agreements embodied
4 in this Decree. No agreement, statement or promise not contained in this Decree shall be valid
5 or binding as between Plaintiffs on the one hand, and Defendants on the other, unless the
6 agreement is in writing, signed by the party to be bound and, where appropriate, approved by
7 the Court. Neither the terms of the Private Settlement Agreement nor any breach thereof shall
8 in any way lessen the obligations of Holchem or the Benjamin Defendants under this Decree.

9 **XIX. PUBLIC COMMENT**

10 This Decree shall be subject to a public comment period of not less than 30 days.
11 Notice of the proposed Decree shall be published in the California Regulatory Notice Register.
12 If DTSC receives comments that disclose facts or considerations indicating that this Agreement
13 is inappropriate, improper or inadequate, then DTSC may (i) withdraw its consent to this
14 Decree, or (ii) seek to modify this Decree with the consent of all Defendants affected by the
15 modification(s).

16 **XX. NOTICE TO THE UNITED STATES AND US E.P.A.**

17 Within 10 days of the day that this Decree is signed by the Parties, DTSC will
18 serve copies of this Decree and the Complaint on the Administrator of U.S. EPA, the Attorney
19 General of the United States and the offices of U.S.EPA, Region IX.

20 **XXI. EFFECTIVE DATE**

21 The Effective Date of this Decree is the date upon which the Court enters an
22 order approving this Decree.

23 **XXII. RETENTION OF JURISDICTION**

24 This Court retains jurisdiction over both the subject matter of and the parties to
25 this Decree for the purposes of enabling any of the Parties to apply to this Court at any time for
26 such further order or relief as may be necessary or appropriate for Dispute Resolution in
27 accordance with Section IX of this Decree or to effectuate the terms of this Decree or enforce
28 compliance with this Decree.

1 **XXIII. MISCELLANEOUS**

2 A. Each undersigned representative of DTSC, the Benjamin Defendants and
3 Holchem certifies that he or she is fully authorized to enter into the terms and conditions of this
4 Decree and to execute and legally bind such Party to this Decree. The parties understand that
5 Chase Chemical Company, Inc. is a dissolved corporation; nevertheless, the obligations,
6 protections and terms of this Decree shall be applicable to and binding upon Chase Chemical
7 Company, Inc. and its successors to the maximum extent provided by law.

8 B. This Decree is entered into and shall be construed and interpreted in
9 accordance with the laws of the State of California.

10 C. The Defendants shall identify, on the attached signature page, the name
11 and address of an agent who is authorized to receive notice on behalf of the Defendants with
12 respect to all matters arising under or relating to this Decree. The Defendants hereby agree to
13 receive notice in that manner.

14
15 SO ORDERED, this 25th day of April, 2000

16
17 **CARLOS R. MORENO**

18 United States District Judge

[Handwritten signature]

The California Department of Toxic Substance
Control; The Hazardous Waste Control Account
and The Hazardous Substance Account

DATED: Nov. 19, 1999

BY: Nennet V. Alvarez
Nennet V. Alvarez
CHIEF, SITE MITIGATION
CLEANUP OPERATIONS
SOUTHERN CALIFORNIA,
BRANCH B
DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

HOLCHEM, INC.

DATED: Nov 8, 1999

BY: [Signature]
Its: President

Name and Address of person authorized to receive
notice on behalf of Holchem pursuant to this
Decree.

Mike McKeays - General Manager
13546 Desmond Street
Pacifica, CA 91331

DATED: _____

HERMAN BENJAMIN, Individually and as Co-
Trustee of the Benjamin Family Trust dated
October 13, 1987.

DATED: _____

ISABEL BENJAMIN, Individually and as Co-
Trustee of the Benjamin Family Trust dated
October 13, 1987.

The California Department of Toxic Substance
Control; The Hazardous Waste Control Account
and The Hazardous Substance Account

DATED: _____

BY: _____
Nennet V. Alvarez
CHIEF, SITE MITIGATION
CLEANUP OPERATIONS
SOUTHERN CALIFORNIA,
BRANCH B
DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

HOLCHEM, INC.

DATED: _____

BY: _____
Its: _____

Name and Address of person authorized to receive
notice on behalf of Holchem pursuant to this
Decree.

DATED: 11-9-99

Herman Benjamin
HERMAN BENJAMIN, Individually and as Co-
Trustee of the Benjamin Family Trust dated
October 13, 1987.

DATED: 11-9-99

Isabel Benjamin
ISABEL BENJAMIN, Individually and as Co-
Trustee of the Benjamin Family Trust dated
October 13, 1987.

CHASE CHEMICAL COMPANY, INC, a
dissolved California corporation.

DATED: 11-9-99

By: Herman Benya
Its: FORMER PRESIDENT

Name and address of person authorized to receive
notice on behalf of the Benjamin Defendants
pursuant to this Decree:

STEVEN L. FELDMAN

Goldfarb, Sturman & Averbach

15760 Ventura Blvd., #1900

Encino, CA 91436

C:\Data\Holchem\cd.nrl.11-4-99

EXHIBIT "A"

APPENDIX A

Chase Chemical Site

13546 Desmond Street

Pacoima, California 91331

STATEMENT OF WORK

PURPOSE:

The purpose of this Statement of Work (SOW) is to set forth the requirements for the Remedial Investigation/Feasibility Study (RI/FS), Baseline Risk Assessment, Public Health Evaluation, Remedial Action Plan (RAP), Public Participation, and other response actions as defined in the Consent Decree. This SOW is designed to provide the framework for implementation of these activities. In the event there is a conflict between the terms of this SOW and the Consent Decree, the terms of the Consent Decree shall control.

This SOW includes the following tasks and sub-tasks:

TASK 1.0: Public Participation

TASK 2.0: RI/FS

- 2.1 RI/FS Process
- 2.2 RI/FS Objectives
- 2.3 RI/FS Workplan
- 2.4 RI Report
- 2.5 FS Report

TASK 3.0: Baseline Risk Assessment

TASK 4.0: CEQA

TASK 5.0: Remedial Action Plan

TASK BY TASK DESCRIPTION

TASK 1.0 PUBLIC PARTICIPATION

Holchem, in coordination with DTSC, shall assess the community and develop a revised Public Participation Plan (PPP) which describes how, under the Consent Decree, the public and adjoining community will be kept informed of activities conducted at the Site and how Holchem will be responding to inquiries from concerned citizens. A PPP has previously been submitted by the Benjamin Defendants. Major steps followed in developing a PPP are as follows:

- (a) Develop a proposed list of interviewees;
- (b) Schedule and conduct community interviews; and
- (c) Analyze interview notes, and develop objectives.

Holchem shall develop and submit Fact Sheets to DTSC for review and approval when key milestones are projected and/or completed or when specifically requested by DTSC. Holchem shall be responsible for distribution of Fact Sheets using the approved community mailing list.

In the event that Holchem proposes subsequent modifications to the revised PPP, it shall submit these modifications to DTSC for approval, which approval shall not be unreasonably withheld.

TASK 2.0: REMOVAL ACTION

Holchem shall prepare and submit to DTSC for review and approval Removal Action Workplan(s) (RAW(s)) which cover all the activities necessary to conduct the removal actions required by the Consent Decree for the Site.

The RAW(s) shall include a detailed description of the tasks to be performed, an implementation schedule, information or data needed for each task, and a listing of the deliverables that will be submitted to DTSC. Either Holchem or DTSC may identify the need for additional work in accordance with section VII.B.5 (Additional Removal Actions) of the Decree..

TASK 3.0 RI/FS

3.1 RI/FS PROCESS

The following elements of the RI/FS process shall be preliminarily defined in the initial Site scoping and refined and modified as additional information is gathered throughout the RI/FS process.

- (a) Conceptual Site Model identifying contamination sources, exposure pathways, and receptors;
- (b) Federal, State and local remedial action objectives including Applicable or Relevant and Appropriate Requirements (ARARs);
- (c) Project phasing including the identification of removal actions;
- (d) General response actions and associated remedial technology types; and
- (e) The need for treatability studies.

3.2 RI/FS OBJECTIVES

The objectives of the RI/FS are to:

- (a) Determine the nature and full extent of hazardous substance contamination of air, soil, surface water and groundwater at the Site and contamination from the Site, including offsite areas affected by the Site;
- (b) Identify all actual and potential exposure pathways and routes through environmental media;
- (c) Determine the magnitude and probability of actual or potential harm to public

health, safety or welfare or to the environment posed by the threatened or actual release of hazardous substances at or from the Site;

- (d) Identify and evaluate appropriate response measures to prevent or minimize future releases and mitigate any releases which have already occurred; and
- (e) Collect and evaluate the information necessary to prepare a draft RAP in accordance with the requirements of the Health and Safety Code (H&SC) section 25356.1 and the National Contingency Plan (NCP).

3.3 RI/FS WORKPLAN

Within sixty (60) days from the Effective Date of the Consent Decree, Holchem shall prepare and submit to DTSC for review and approval a detailed RI/FS Workplan and implementation schedule which covers all the activities necessary to conduct a complete RI/FS of the Site.

The RI/FS Workplan shall include a detailed description of the tasks to be performed, information or data needed for each task, and the deliverables which will be submitted to DTSC. Either Holchem or DTSC may identify the need for additional work.

RI/FS Workplan deliverables are discussed in the remainder of this Section, with a schedule for implementation, and monthly reports. The RI/FS Workplan must include all the elements listed below.

- (a) Project Management Plan. The Project Management Plan shall define relationships and responsibilities for major tasks and project management items by Holchem, its

contractors, subcontractors, and consultants. The plan shall include an organization chart with the names and titles of key personnel and a description of their individual responsibilities.

- (b) Scoping Document. The Scoping Document shall incorporate program goals, program management principles, and expectations contained in the NCP. It shall include:

- (1) An analysis and summary of the Site background and the physical setting.

At a minimum, the following information is required:

- (A) A map of the Site, and if they exist, aerial photographs and blueprints showing buildings and structures;
- (B) A description of past disposal practices;
- (C) A list of all hazardous substances, materials or wastes which were disposed, discharged, spilled, treated, stored, transferred, transported to, handled or used at the Site, and a description of their estimated volumes, concentrations, and characteristics;
- (D) A description of hazardous substance characteristics; and,
- (E) If applicable, a description of all current and past manufacturing processes which are or were related to each hazardous substance, material or waste.

- (2) An analysis and summary of previous response actions including a summary of all existing data including air, soil, surface water, and groundwater data

and the Quality Assurance/Quality Control (QA/QC) procedures which were followed;

- (3) Presentation of the Conceptual Site Model;
 - (4) The scope and objectives of RI/FS activities; and
 - (5) Preliminary identification of possible response actions and the data needed for the evaluation of alternatives. Removal actions shall be proposed, if needed, based on the initial evaluation of threats to public health and the environment. If remedial actions involving treatment can be identified, treatability studies shall be conducted during the characterization phase, unless Holchem and DTSC agree that such studies are unnecessary;
 - (6) If applicable, initial presentation of the Site Remediation Strategy.
- (c) **Field Sampling Plan.** The Field Sampling Plan shall include:
- (1) Sampling objectives, including a brief description of data gaps and how the field sampling plan will address these gaps;
 - (2) Sample locations, including a map showing these locations, and proposed frequency;
 - (3) Sample designation or numbering system;
 - (4) Detailed specification of sampling equipment and procedures;
 - (5) Sample handling and analysis including preservation methods, shipping requirements and holding times; and
 - (6) Management plan for wastes generated.

(d) **Quality Assurance Project Plan.** This plan shall include:

- (1) Project organization and responsibilities with respect to sampling and analysis;
- (2) Quality assurance objectives for measurement including accuracy, precision, and method detection limits. In selecting analytical methods, Holchem shall consider obtaining detection limits at or below potential Applicable or Relevant and Appropriate Requirements (ARARs), such as Maximum Contaminant Levels (MCLs);
- (3) Sampling procedures;
- (4) Sample custody procedures and documentation;
- (5) Field and laboratory calibration procedures;
- (6) Analytical procedures;
- (7) Laboratory to be used certified pursuant to H&SC section 25198;
- (8) Specific routine procedures used to assess data (precision, accuracy and completeness) and corrective actions;
- (9) Reporting procedure for measurement of system performance and data quality;
- (10) Data management, data reduction, validation and reporting. Information shall be accessible to downloading into DTSC's system; and
- (11) Internal quality control.

(e) **Health and Safety Plan.** A Site specific Health and Safety Plan shall be prepared

in accordance with federal (29 CFR 1910.120) and state (Title 8 CCR section 5192) regulations and shall describe the following:

- (1) Field activities including work tasks, objectives, and personnel requirements and a description of hazardous substances on the Site;
- (2) Holchem's key personnel and responsibilities;
- (3) Potential hazards to workers including chemical hazards, physical hazards, confined spaces and climatic conditions;
- (4) Potential risks arising from the work being performed including the impact to workers, the community and the environment;
- (5) Exposure monitoring plan;
- (6) Personal protective equipment and engineering controls;
- (7) Site controls including work zones and security measures;
- (8) Decontamination procedures;
- (9) General safe work practices;
- (10) Sanitation facilities;
- (11) Standard operating procedures;
- (12) Emergency response plan covering workers addressing potential hazardous material releases;
- (13) Training requirements;
- (14) Medical surveillance program; and
- (15) Record keeping.

- (f) Other Activities. A description of any other significant activities which are appropriate to complete the RI/FS shall be included.
- (g) Schedule. A schedule which provides specific time frames and dates for completion of each activity and report conducted or submitted under the RI/FS Workplan including the schedules for removal actions.

3.4 RI REPORT

In accordance with the approved RI/FS Workplan schedule, Holchem shall prepare an RI Report and submit it to DTSC for review and approval.

Holchem shall identify the sources of contamination and define the nature, extent, and volume of the contamination. Using this information, the contaminant fate and transport shall be evaluated. The RI Report shall contain:

- (a) Site Physical Characteristics. Data on the physical characteristics of the Site and surrounding area shall be collected to the extent necessary to define potential transport pathways and receptor populations and to provide sufficient engineering data for development and screening of remedial action alternatives.
- (b) Sources of Contamination. Contamination sources (including heavily contaminated media) shall be defined. The data shall include the source locations, type of containment, waste characteristics, and Site features related to contaminant migration and human exposure.
- (c) Nature and Extent of Contamination. Contaminants shall be identified and the horizontal and vertical extent of contamination shall be defined in soil,

groundwater, and air. Spatial and temporal trends and the fate and transport of contamination shall be evaluated.

3.5 FEASIBILITY STUDY REPORT

Holchem shall prepare an FS Report and submit it to DTSC for review and approval no later than 60 days from the date DTSC approves the RI Report. The FS Report shall summarize the results of the FS including the following:

- (a) Documentation of all treatability studies conducted.
- (b) Development of medium specific or operable unit specific remedial action objectives, including ARARs.
- (c) Identification and screening of general response actions, remedial technologies, and process options on a medium and/or operable unit specific basis.
- (d) Evaluation of alternatives based on the criteria contained in the NCP and H&SC section 25356.1 including:

Threshold Criteria:

- (1) Overall protection of human health and the environment.
- (2) Compliance with ARARs.

Primary Balancing Criteria:

- (1) Long-term effectiveness and permanence.
- (2) Reduction of toxicity, mobility, or volume through treatment.
- (3) Short-term effectiveness.
- (4) Implementability based on technical and administrative feasibility.

(5) Cost.

Modifying Criteria:

(1) State and local agency acceptance.

(2) Community Acceptance

TASK 4.0 BASELINE RISK ASSESSMENT

Holchem shall submit a Baseline Risk Assessment with respect to exposure of hazardous substances found at the Site. The Baseline Risk Assessment is to be submitted within sixty (60) days from the approval of the RI Report. The Baseline Risk Assessment Report shall include the following components:

- (a) **Contaminant Identification.** Characterization data shall be screened to identify contaminants of concern in order to focus subsequent efforts of the risk assessment process.
- (b) **Environmental Evaluation.** An ecological assessment consisting of:
 - (1) Identification of sensitive environments and rare, threatened, or endangered species and their habitats; and
 - (2) As appropriate, ecological investigations to assess the actual or potential effects on the environment and/or develop remediation criteria.
- (c) **Exposure Assessment.** The objectives of an exposure assessment are to identify actual or potential exposure pathways, to characterize the potentially exposed populations, and to determine the extent of the exposure.
- (d) **Toxicity Assessment.** Responsible Parties shall evaluate the types of adverse health or environmental effects associated with individual and multiple chemical exposures; the relationship between magnitude of exposures and adverse effects; and related uncertainties such as the weight of evidence for a chemical's potential carcinogenicity in humans.

- (e) **Risk Characterization.** Risk characterization now includes the potential risks of adverse health or environmental effects for each of the exposure scenarios derived in the exposure assessment.

TASK 5.0 CEQA

California Environmental Quality Act (CEQA). DTSC must comply with CEQA insofar as activities required by this order are projects requiring CEQA compliance. Holchem shall submit an Initial Study, associated checklist, and discussion of mitigation methods (if any) when required by CEQA, concurrent with submittal of the draft RAP specified in Section 5., or when notified by DTSC that an activity required by the Consent Decree requires CEQA compliance. Based on the results of the Initial Study, DTSC will determine if the project is exempt or whether a Negative Declaration, a mitigated negative declaration, or an Environmental Impact Report (EIR) should be prepared. If DTSC believes that an EIR is necessary, it may contact Holchem prior to the submittal of the draft RAP and direct it to perform tasks necessary for the preparation and finalization of the EIR.

TASK 6.0 REMEDIAL ACTION PLAN

No later than sixty (60) days after DTSC approval of the FS Report, Holchem shall prepare and submit to DTSC a draft RAP. The draft RAP shall be consistent with the NCP and H&SC section 25356.1, et seq. The draft RAP public review process may be combined with that of any other documents required by CEQA. The draft RAP shall be based on and summarize the approved RI/FS Reports, and shall clearly set forth:

- (a) Health and safety risks posed by the conditions at the Site.
- (b) The effect of contamination or pollution levels upon present, future, and probable beneficial uses of contaminated, polluted, or threatened resources.
- (c) The effect of alternative remedial action measures on the reasonable availability of groundwater resources for present, future, and probable beneficial uses.
- (d) Site specific characteristics, including the potential for off-site migration of hazardous substances, the surface or subsurface soil, and the hydrogeologic conditions, as well as preexisting background contamination levels.
- (e) Cost effectiveness of alternative remedial action measures. Land disposal shall not be deemed the most cost effective measure merely on the basis of lower short term cost.
- (f) The potential environmental impacts of alternative remedial action measures, including, but not limited to, land disposal of the untreated hazardous substances as opposed to treatment of the hazardous substances to remove or reduce its volume, toxicity, or mobility prior to disposal.

(g) A statement of reasons setting forth the basis for the removal and remedial actions selected. The statement shall include an evaluation of each proposed alternative submitted and evaluate the consistency of the removal and remedial actions proposed by the plan with the federal regulations and factors specified in subdivision (d) of H&SC section 25356.1. The statement shall also include a proposed Nonbinding Preliminary Allocation of Responsibility (NBAR) for all identified Responsible Parties.

(h) A schedule for implementation of all proposed remedial actions.

In conjunction with DTSC, Holchem shall implement the public review process specified in H&SC section 25356.1(d)(1), et seq. Within 30 days of closure of the public comment period, Holchem shall submit a written Responsiveness Summary of all written and oral comments presented and received during the public comment period.

Following DTSC's review and finalization of the Responsiveness Summary, DTSC will specify any changes to be made in the RAP. Holchem shall consider DTSC's proposed changes and shall modify the document in accordance with DTSC's specifications and submit a final RAP within 30 days of receipt of DTSC's comments.

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EXHIBIT "B"

SUMMARY BY ACTIVITY

Page 1 of 13

DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)
P.O. Box 806
Sacramento, CA 95812-0806

Trial, No 294
November 17, 1999
12.50.13

Site Name: HOLCHEM, INC.
Project Code: 300593

Reporting Period: 07/1995 to 07/1999

DIRECT LABOR - 1995/1996

PCA: 14815 - PRELIMINARY ASSESSMENT

Name	Title	Adj.	Pay	Hours	Amount
KRUG RE	HAZARDOUS SUBSTNC SCIEN		03/1996	6.00	150.48
KRUG RE	HAZARDOUS SUBSTNC SCIEN		04/1996	10.00	250.84
KRUG RE	HAZARDOUS SUBSTNC SCIEN		05/1996	39.00	934.26
KRUG RE	HAZARDOUS SUBSTNC SCIEN		06/1996	24.00	660.26

** Totals for PCA 14815 : 79.00 1,995.84

** DIRECT LABOR Totals: 79.00 1,995.84

INDIRECT LABOR - 1995/1996

FY	Months	Fund	Overhead Rate	Direct Labor	Overhead Charges
1995	Jan-Jun	FED TRUST 0890	1.3443	1,995.84	2,683.01

** INDIRECT LABOR Totals: 1,995.84 2,683.01

SBA ADJUSTMENTS - 1995/1996

Description	Date	Amount
MISC. ADJUSTMENTS	06/1996	-2,683.01
MISC. ADJUSTMENTS	06/1996	-1,995.84

** SBA ADJUSTMENT Totals: -4,678.85

Total 1995/1996 Charges: .00

SUMMARY BY ACTIVITY

DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)
P.O. Box 806
Sacramento, CA 95812-0806

Trial, No 294
November 17, 1999
12.50.13

Site Name: HOLCHEM, INC.
Project Code: 300593

Reporting Period: 07/1995 to 07/1999

DIRECT LABOR - 1996/1997

PCA: 11045 - ENFORCEMENT ACTIONS/AGREEMENTS

Name	Title	Adj.	Pay	Hours	Amount
KRUG RE	HAZARDOUS SUBSTNC SCIEN		12/1996	21.00	647.46
GONZALES F	HAZARDOUS SUBSTNC ENGRNG G		01/1997	7.00	226.24
HOLMES GA	SUPVNG HAZARDOUS SUBSTNC SCI		01/1997	6.50	228.82
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		01/1997	10.00	353.10
KRUG RE	HAZARDOUS SUBSTNC SCIEN		01/1997	56.00	1,424.16
WEINGARTEN D	STAFF COUNSEL		01/1997	1.50	62.37
GONZALES F	HAZARDOUS SUBSTNC ENGRNG G		02/1997	1.50	50.78
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		02/1997	8.50	319.60
KRUG RE	HAZARDOUS SUBSTNC SCIEN		02/1997	38.00	971.86
LOPEZ C	WORD PROCESSING TECHN		02/1997	2.25	38.32
SAEBFAR HT	SUPVNG HAZARDOUS SUBSTNC SCI		02/1997	.50	20.92
HOLMES GA	SUPVNG HAZARDOUS SUBSTNC SCI		03/1997	1.00	33.62
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		03/1997	10.00	363.15
KRUG RE	HAZARDOUS SUBSTNC SCIEN		03/1997	33.00	928.40
SAEBFAR HT	SUPVNG HAZARDOUS SUBSTNC SCI		03/1997	4.00	168.93
ALVAREZ NV	SUPVNG HAZARDOUS SUBSTNC SCI		04/1997	1.10	43.87
HOLMES GA	SUPVNG HAZARDOUS SUBSTNC SCI		04/1997	1.00	28.72
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		04/1997	16.00	572.87
KRUG RE	HAZARDOUS SUBSTNC SCIEN		04/1997	48.00	1,227.64
LOPEZ C	WORD PROCESSING TECHN		04/1997	3.25	52.82
WEINGARTEN D	STAFF COUNSEL		04/1997	5.75	220.72
HOLMES GA	SUPVNG HAZARDOUS SUBSTNC SCI		05/1997	1.00	31.69
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		05/1997	9.00	322.23
KOYASAKO SK	ASST CHIEF COUNSEL		05/1997	1.25	64.98
KRUG RE	HAZARDOUS SUBSTNC SCIEN		05/1997	20.00	478.87
LOPEZ C	WORD PROCESSING TECHN		05/1997	1.75	28.28
SAEBFAR HT	SUPVNG HAZARDOUS SUBSTNC SCI		05/1997	1.00	35.42
WEINGARTEN D	STAFF COUNSEL		05/1997	5.00	215.23
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		06/1997	12.00	452.53
KOYASAKO SK	ASST CHIEF COUNSEL		06/1997	2.00	105.29
SAEBFAR HT	SUPVNG HAZARDOUS SUBSTNC SCI		06/1997	1.00	42.55
WEINGARTEN D	STAFF COUNSEL		06/1997	2.50	98.67

** Totals for PCA 11045 :

332.35 9,860.11

PCA: 11050 - REMEDIAL INVESTIGATIONS/FEASIBILITY STDY

Name	Title	Adj.	Pay	Hours	Amount
HOLMES GA	SUPVNG HAZARDOUS SUBSTNC SCI		12/1996	3.00	106.21
HOLMES GA	SUPVNG HAZARDOUS SUBSTNC SCI		04/1997	4.00	114.96
KRUG RE	HAZARDOUS SUBSTNC SCIEN		06/1997	17.00	478.27

** Totals for PCA 11050 :

24.00 699.44

PCA: 11095 - CASE DEVELOPMENT & COST RECOVERY

SUMMARY BY ACTIVITY

Page 3 of 13

DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)
P.O. Box 806
Sacramento, CA 95812-0806

Trial, No 294
November 17, 1999
12.50.13

Site Name: HOLCHEM, INC.
Project Code: 300593

Reporting Period: 07/1995 to 07/1999

Name	Title	Adj.	Pay	Hours	Amount
SHAPIRO G	HAZARDOUS SUBSTNC SCIEN		06/1997	.25	8.20
** Totals for PCA 11095 :				.25	8.20

PCA: 11115 - PUBLIC PARTICIPATION PLAN DEVOP/IMPLEM.

Name	Title	Adj.	Pay	Hours	Amount
KIMMEL JW	PUBLIC PARTICIPATION SPEC		06/1997	.75	24.36
** Totals for PCA 11115 :				.75	24.36

PCA: 14815 - PRELIMINARY ASSESSMENT

Name	Title	Adj.	Pay	Hours	Amount
KRUG RE	HAZARDOUS SUBSTNC SCIEN		07/1996	5.00	145.28
KRUG RE	HAZARDOUS SUBSTNC SCIEN		08/1996	15.00	358.36
KRUG RE	HAZARDOUS SUBSTNC SCIEN		09/1996	13.00	308.83
KRUG RE	HAZARDOUS SUBSTNC SCIEN		10/1996	16.00	367.82
KRUG RE	HAZARDOUS SUBSTNC SCIEN	11/1996	10/1996	16.00	61.71
KRUG RE	HAZARDOUS SUBSTNC SCIEN		11/1996	23.00	539.77
KRUG RE	HAZARDOUS SUBSTNC SCIEN	12/1996	11/1996	23.00	65.86
WEINGARTEN D	STAFF COUNSEL		12/1996	.50	18.73
WEINGARTEN D	STAFF COUNSEL		02/1997	3.76	171.99
WEINGARTEN D	STAFF COUNSEL		03/1997	9.00	375.86
KOYASAKO SK	ASST CHIEF COUNSEL		04/1997	1.26	61.07
** Totals for PCA 14815 :				125.52	2,475.28
** DIRECT LABOR Totals:				482.87	13,067.39

INDIRECT LABOR - 1996/1997

FY	Months	Fund	Overhead Rate	Direct Labor	Overhead Charges
1996	Jul-Dec	FED TRUST 0890	1.3468	1,679.72	2,262.25
1996	Jan-Jun	FED TRUST 0890	1.4238	548.02	780.27
1996	Jul-Dec	HWCA 0014	1.3468	940.31	1,266.41
1996	Jan-Jun	HWCA 0014	1.4238	9,899.34	14,094.68
** INDIRECT LABOR Totals:				13,067.39	18,403.61

TRAVEL CHARGES - 1996/1997

Fund	Amount
0014	83.43
0890	21.60
** TRAVEL Totals:	
	105.03

SUMMARY BY ACTIVITY

DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)
P.O. Box 806
Sacramento, CA 95812-0806

Trial, No 294
November 17, 1999
12.50.13

Site Name: HOLCHEM, INC.
Project Code: 300593

Reporting Period: 07/1995 to 07/1999

SBA ADJUSTMENTS - 1996/1997

Description	Date	Amount
MISC. ADJUSTMENTS	06/1997	-29.28
MISC. ADJUSTMENTS	06/1997	-3,380.59
MISC. ADJUSTMENTS	06/1997	-2,475.28
** SBA ADJUSTMENT Totals:		-5,885.15
Total 1996/1997 Charges:		25,690.88

SUMMARY BY ACTIVITY

DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)
P.O. Box 806
Sacramento, CA 95812-0806

Trial, No 294
November 17, 1999
12.50.13

Site Name: HOLCHEM, INC.
Project Code: 300593

Reporting Period: 07/1995 to 07/1999

DIRECT LABOR - 1997/1998

PCA: 11045 - ENFORCEMENT ACTIONS/AGREEMENTS

Name	Title	Adj.	Pay	Hours	Amount
PEREZ RM	STAFF COUNSEL III-SUPVR		07/1997	1.00	49.58
WEINGARTEN D	STAFF COUNSEL		07/1997	1.00	38.59
KOYASAKO SK	ASST CHIEF COUNSEL	08/1997	05/1997	.00	-.28
WEINGARTEN D	STAFF COUNSEL		08/1997	.75	29.81
WEINGARTEN D	STAFF COUNSEL		09/1997	5.00	193.32
WEINGARTEN D	STAFF COUNSEL		10/1997	.25	9.67
KOYASAKO SK	ASST CHIEF COUNSEL		11/1997	.50	24.08
SAEBFAR HT	SUPVNG HAZARDOUS SUBSTNC SCI		11/1997	3.00	124.14
WEINGARTEN D	STAFF COUNSEL		11/1997	3.50	136.62
KOYASAKO SK	ASST CHIEF COUNSEL		12/1997	.80	39.75
LOPEZ C	WORD PROCESSING TECHN		01/1998	1.00	16.40
WEINGARTEN D	STAFF COUNSEL		01/1998	1.25	52.44
SAEBFAR HT	SUPVNG HAZARDOUS SUBSTNC SCI		02/1998	1.25	51.42
ALVAREZ NV	SUPVNG HAZARDOUS SUBSTNC SCI		03/1998	3.00	117.25
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		03/1998	3.00	105.95
LOPEZ C	WORD PROCESSING TECHN		03/1998	5.00	83.51
SAEBFAR HT	SUPVNG HAZARDOUS SUBSTNC SCI		03/1998	.50	20.41
WEINGARTEN D	STAFF COUNSEL		03/1998	4.40	184.59
LOPEZ C	WORD PROCESSING TECHN		04/1998	1.00	16.14
LOPEZ C	WORD PROCESSING TECHN		05/1998	3.00	48.69
BROWN G	STAFF COUNSEL		06/1998	9.50	223.01
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		06/1998	12.00	410.15
LOPEZ C	WORD PROCESSING TECHN		06/1998	4.50	73.04
WEINGARTEN D	STAFF COUNSEL		06/1998	1.30	50.37

** Totals for PCA 11045 :

66.50 2,098.65

PCA: 11050 - REMEDIAL INVESTIGATIONS/FEASIBILITY STDY

Name	Title	Adj.	Pay	Hours	Amount
HINOJOSA J	HAZARDOUS SUBSTNC SCIEN		07/1997	3.00	93.45
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		07/1997	4.00	139.30
KRUG RE	HAZARDOUS SUBSTNC SCIEN		07/1997	19.00	480.49
LOPEZ C	WORD PROCESSING TECHN		07/1997	.50	8.12
GONZALES F	HAZARDOUS SUBSTNC ENGRNG G		08/1997	35.50	1,147.33
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		08/1997	19.00	682.20
KRUG RE	HAZARDOUS SUBSTNC SCIEN		08/1997	97.00	2,568.40
ZANORIA A	HAZARDOUS SUBSTNC ENGRNG G		08/1997	2.50	81.12
ALVAREZ NV	SUPVNG HAZARDOUS SUBSTNC SCI		09/1997	3.00	115.87
EARLEY JD	ASSOC INDUSTRIAL HYGIENIST		09/1997	17.00	507.33
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		09/1997	8.00	281.53
KRUG RE	HAZARDOUS SUBSTNC SCIEN		09/1997	30.00	1,067.38
LOPEZ C	WORD PROCESSING TECHN		09/1997	.75	12.26
EARLEY JD	ASSOC INDUSTRIAL HYGIENIST	10/1997	09/1997	17.00	34.21
KRUG RE	HAZARDOUS SUBSTNC SCIEN		10/1997	23.00	579.30

SUMMARY BY ACTIVITY

DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)
P.O. Box 806
Sacramento, CA 95812-0806

Trial, No 294
November 17, 1999
12.50.13

Site Name: HOLCHEM, INC.
Project Code: 300593

Reporting Period: 07/1995 to 07/1999

Name	Title	Adj.	Pay	Hours	Amount
OWENS L	OFFICE TECHN-TYPING		10/1997	.75	13.36
ALVAREZ NV	SUPVNG HAZARDOUS SUBSTNC SCI		11/1997	1.50	58.45
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		11/1997	5.00	176.50
KRUG RE	HAZARDOUS SUBSTNC SCIEN		11/1997	35.00	1,055.58
BAKER KT	SUPVNG HAZARDOUS SUBSTNC ENG		12/1997	.30	12.04
EARLEY JD	ASSOC INDUSTRIAL HYGIENIST		12/1997	15.00	473.45
GONZALES F	HAZARDOUS SUBSTNC ENGRNG G		12/1997	8.00	300.82
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		12/1997	2.00	71.43
KRUG RE	HAZARDOUS SUBSTNC SCIEN		12/1997	36.00	1,236.83
LOPEZ C	WORD PROCESSING TECHN		12/1997	.50	8.32
PARR F	ASSOC INDUSTRIAL HYGIENIST		12/1997	1.00	28.20
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		01/1998	1.00	37.51
KRUG RE	HAZARDOUS SUBSTNC SCIEN		01/1998	36.00	1,004.04
LOPEZ C	WORD PROCESSING TECHN	01/1998	12/1997	.50	.03
BAKER KT	SUPVNG HAZARDOUS SUBSTNC ENG		02/1998	.30	10.43
GONZALES F	HAZARDOUS SUBSTNC ENGRNG G		02/1998	64.50	2,194.27
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		02/1998	4.00	148.71
JOHNSON TR	HAZARDOUS SUBSTNC ENGRNG G		02/1998	3.00	111.56
KRUG RE	HAZARDOUS SUBSTNC SCIEN		02/1998	67.00	1,846.85
GONZALES F	HAZARDOUS SUBSTNC ENGRNG G		03/1998	18.90	593.51
HINOJOSA J	HAZARDOUS SUBSTNC SCIEN		03/1998	13.00	404.78
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		03/1998	1.00	35.31
KRUG RE	HAZARDOUS SUBSTNC SCIEN		03/1998	70.00	1,952.27
GONZALES F	HAZARDOUS SUBSTNC ENGRNG G		04/1998	2.00	64.95
KRUG RE	HAZARDOUS SUBSTNC SCIEN		04/1998	36.00	1,236.83
GONZALES F	HAZARDOUS SUBSTNC* ENGRNG G		05/1998	27.70	942.36
KRUG RE	HAZARDOUS SUBSTNC SCIEN		05/1998	37.00	985.53
SOTELO J	HAZARDOUS SUBSTNC ENGR		05/1998	48.00	1,754.34
ALVAREZ NV	SUPVNG HAZARDOUS SUBSTNC SCI		06/1998	1.00	37.20
BAKER KT	SUPVNG HAZARDOUS SUBSTNC ENG	06/1998	03/1998	.30	10.23
GONZALES F	HAZARDOUS SUBSTNC ENGRNG G		06/1998	2.00	64.95
KRUG RE	HAZARDOUS SUBSTNC SCIEN		06/1998	39.00	1,087.74
SCHIEVELBEIN KL	ASSOCIATE ENVRN PLANNER		06/1998	2.00	63.59
SOTELO J	HAZARDOUS SUBSTNC ENGR		06/1998	28.00	898.28
ZANORIA A	HAZARDOUS SUBSTNC ENGRNG G		06/1998	1.00	32.63

** Totals for PCA 11050 : 887.50 26,751.17

PCA: 11115 - PUBLIC PARTICIPATION PLAN DEVLOP/IMPLEM.

Name	Title	Adj.	Pay	Hours	Amount
KIMMEL JW	PUBLIC PARTICIPATION SPEC		07/1997	3.75	111.19
KIMMEL JW	PUBLIC PARTICIPATION SPEC		08/1997	8.00	245.89
KIMMEL JW	PUBLIC PARTICIPATION SPEC	09/1997	07/1997	3.75	6.28
KIMMEL JW	PUBLIC PARTICIPATION SPEC	09/1997	08/1997	8.00	3.48
KIMMEL JW	PUBLIC PARTICIPATION SPEC		09/1997	8.00	247.23
MAYS T	PUBLIC PARTICIPATION SUPVR		09/1997	.50	16.06
DIXON DJ	WORD PROCESSING TECHN	10/1997	07/1997	5.00	67.32
KIMMEL JW	PUBLIC PARTICIPATION SPEC	12/1997	10/1997	13.50	417.27
KIMMEL JW	PUBLIC PARTICIPATION SPEC		12/1997	13.75	424.38

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DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)
P.O. Box 806
Sacramento, CA 95812-0806

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Site Name: HOLCHEM, INC.
Project Code: 300593

Reporting Period: 07/1995 to 07/1999

MAYS T	PUBLIC PARTICIPATION SUPVR	12/1997	.50	16.39
KIMMEL JW	PUBLIC PARTICIPATION SPEC	01/1998	5.20	168.47
KIMMEL JW	PUBLIC PARTICIPATION SPEC	02/1998	13.30	437.39
KIMMEL JW	PUBLIC PARTICIPATION SPEC	03/1998 11/1997	15.50	479.08
KIMMEL JW	PUBLIC PARTICIPATION SPEC	03/1998	3.50	108.24
MAYS T	PUBLIC PARTICIPATION SUPVR	03/1998	.30	9.77
DIXON DJ	WORD PROCESSING TECHN	04/1998	1.00	13.67
KIMMEL JW	PUBLIC PARTICIPATION SPEC	04/1998	3.50	108.24
KIMMEL JW	PUBLIC PARTICIPATION SPEC	05/1998	.70	22.68
MAYS T	PUBLIC PARTICIPATION SUPVR	06/1998	.60	19.81

** Totals for PCA 11115 : 108.35 2,922.84

PCA: 12115 - PUBLIC PARTICIPATION PLAN DEVLOP/IMPLEM.

Name	Title	Adj.	Pay	Hours	Amount
MAYS T	PUBLIC PARTICIPATION SUPVR		10/1997	.50	16.31
MAYS T	PUBLIC PARTICIPATION SUPVR		11/1997	.50	16.40

** Totals for PCA 12115 : 1.00 32.71

PCA: 14815 - PRELIMINARY ASSESSMENT

Name	Title	Adj.	Pay	Hours	Amount
KRUG RE	HAZARDOUS SUBSTNC SCIEN		09/1997	14.00	498.10
KRUG RE	HAZARDOUS SUBSTNC SCIEN		10/1997	82.00	2,065.30
KRUG RE	HAZARDOUS SUBSTNC SCIEN		11/1997	21.00	633.36
YEAMAN RR	SR HAZARDOUS SUBSTNC SCIEN		12/1997	3.00	108.37
KRUG RE	HAZARDOUS SUBSTNC SCIEN		01/1998	6.00	167.34
YEAMAN RR	SR HAZARDOUS SUBSTNC SCIEN		01/1998	8.00	287.26
HOLMES GA	SUPVNG HAZARDOUS SUBSTNC SCI		02/1998	1.20	36.80
KRUG RE	HAZARDOUS SUBSTNC SCIEN		02/1998	7.00	192.95

** Totals for PCA 14815 : 142.20 3,989.48

PCA: 14820 - SITE INSPECTION

Name	Title	Adj.	Pay	Hours	Amount
YEAMAN RR	SR HAZARDOUS SUBSTNC SCIEN		02/1998	2.00	71.40

** Totals for PCA 14820 : 2.00 71.40

** DIRECT LABOR Totals: 1,207.55 35,866.25

INDIRECT LABOR - 1997/1998

FY	Months	Fund	Overhead Rate	Direct Labor	Overhead Charges
1996	Jan-Jun	HWCA 0014	1.4238	.28	.40
1997	Jul-Dec	FED TRUST 0890	1.4873	3,305.13	4,915.72
1997	Jan-Jun	FED TRUST 0890	1.5290	755.75	1,155.54
1997	Jul-Dec	HWCA 0014	1.4873	13,946.14	20,742.09

SUMMARY BY ACTIVITY

DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)
P.O. Box 806
Sacramento, CA 95812-0806

Trial, No 294
November 17, 1999
12.50.13

Site Name: HOLCHEM, INC.
Project Code: 300593

Reporting Period: 07/1995 to 07/1999

1997 Jan-Jun	HWCA 0014	1.5290	17,859.51	27,307.19
** INDIRECT LABOR Totals:			35,866.25	54,120.14

TRAVEL CHARGES - 1997/1998

	Fund	Amount
	0014	326.14
** TRAVEL Totals:		326.14

SBA ADJUSTMENTS - 1997/1998

Description	Date	Amount
ERROR SUSPENSE LABOR ADJ	11/1997	100.13
ERROR SUSPENSE LABOR ADJ	11/1997	67.32
MISC. ADJUSTMENTS	03/1998	-1,155.54
MISC. ADJUSTMENTS	12/1997	-4,915.72
MISC. ADJUSTMENTS	12/1997	-3,305.13
MISC. ADJUSTMENTS	03/1998	-71.40
MISC. ADJUSTMENTS	03/1998	-684.35
** SBA ADJUSTMENT Totals:		-9,964.69
Total 1997/1998 Charges:		80,347.84

SUMMARY BY ACTIVITY

DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)
P.O. Box 806
Sacramento, CA 95812-0806

Trial, No 294
November 17, 1999
12.50.13

Site Name: HOLCHEM, INC.
Project Code: 300593

Reporting Period: 07/1995 to 07/1999

DIRECT LABOR - 1998/1999

PCA: 11045 - ENFORCEMENT ACTIONS/AGREEMENTS

Name	Title	Adj.	Pay	Hours	Amount
BROWN G	STAFF COUNSEL		07/1998	2.50	61.96
BROWN G	STAFF COUNSEL		08/1998	4.00	100.18
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		08/1998	3.00	105.95
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		09/1998	2.00	65.36
BROWN G	STAFF COUNSEL		10/1998	10.00	237.10
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		10/1998	6.00	193.01
BROWN G	STAFF COUNSEL		11/1998	2.00	45.92
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		11/1998	3.00	103.65
BROWN G	STAFF COUNSEL		01/1999	1.00	24.83
BROWN G	STAFF COUNSEL		02/1999	2.50	62.89
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		02/1999	1.00	35.79
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		03/1999	2.00	63.70
BROWN G	STAFF COUNSEL		04/1999	1.50	37.47
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		04/1999	2.00	68.67
BROWN G	STAFF COUNSEL		05/1999	4.50	150.42
BROWN G	STAFF COUNSEL		06/1999	2.00	74.18
FARKAS G	HAZARDOUS SUBSTNC SCIEN		06/1999	7.00	206.70
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		06/1999	8.50	305.02

** Totals for PCA 11045 :

64.50 1,942.80

PCA: 11050 - REMEDIAL INVESTIGATIONS/FEASIBILITY STDY

Name	Title	Adj.	Pay	Hours	Amount
BAKER KT	SUPVNG HAZARDOUS SUBSTNC ENG		07/1998	.20	7.38
GONZALES F	HAZARDOUS SUBSTNC ENGRNG G	07/1998	03/1998	18.90	27.29
GONZALES F	HAZARDOUS SUBSTNC ENGRNG G		07/1998	39.00	1,271.89
HART JR	SUPVNG HAZARDOUS SUBSTNC ENG		07/1998	3.00	119.06
KRUG RE	HAZARDOUS SUBSTNC SCIEN		07/1998	45.00	1,277.56
SOTELO J	HAZARDOUS SUBSTNC ENGR		07/1998	73.00	2,341.95
BOSWELL MT	ASSOC INDUSTRIAL HYGIENIST		08/1998	1.00	34.50
EARLEY JD	ASSOC INDUSTRIAL HYGIENIST		08/1998	25.00	789.09
GONZALES F	HAZARDOUS SUBSTNC ENGRNG G		08/1998	44.40	1,441.82
HATHAWAY TR	STAFF TOXICOLOGIST-SPEC		08/1998	9.00	381.42
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		08/1998	3.00	105.95
JOHNSON TR	HAZARDOUS SUBSTNC ENGRNG G		08/1998	3.50	111.48
KRUG RE	HAZARDOUS SUBSTNC SCIEN		08/1998	41.00	1,143.47
OSEAS N	SR INDUSTRIAL HYGIENIST		08/1998	1.60	53.70
SOTELO J	HAZARDOUS SUBSTNC ENGR		08/1998	1.00	33.96
KRUG RE	HAZARDOUS SUBSTNC SCIEN		09/1998	65.00	1,548.60
SOTELO J	HAZARDOUS SUBSTNC ENGR		09/1998	2.00	60.74
EARLEY JD	ASSOC INDUSTRIAL HYGIENIST		10/1998	2.00	58.91
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		10/1998	4.00	128.71
KRUG RE	HAZARDOUS SUBSTNC SCIEN		10/1998	35.00	873.84
SCHIEVELBEIN KL	ASSOCIATE ENVRN PLANNER		10/1998	6.50	193.23

SUMMARY BY ACTIVITY

DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)
P.O. Box 806
Sacramento, CA 95812-0806

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November 17, 1999
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Site Name: HOLCHEM, INC.
Project Code: 300593

Reporting Period: 07/1995 to 07/1999

SOTELO J	HAZARDOUS SUBSTNC ENGR	10/1998	27.00	843.90
GONZALES F	HAZARDOUS SUBSTNC ENGRNG G	11/1998	5.50	173.63
KRUG RE	HAZARDOUS SUBSTNC SCIEN	11/1998	25.00	718.97
SOTELO J	HAZARDOUS SUBSTNC ENGR	11/1998 10/1998	27.00	31.95
SOTELO J	HAZARDOUS SUBSTNC ENGR	11/1998	16.00	425.98
CHRISTMANN CC	SR HAZARDOUS SUBSTNC ENGRNG	12/1998	.50	16.87
KRUG RE	HAZARDOUS SUBSTNC SCIEN	12/1998	35.00	850.94
SOTELO J	HAZARDOUS SUBSTNC ENGR	12/1998 11/1998	16.00	37.44
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI	01/1999	2.00	72.79
KRUG RE	HAZARDOUS SUBSTNC SCIEN	01/1999 12/1998	35.00	86.62
KRUG RE	HAZARDOUS SUBSTNC SCIEN	01/1999	54.00	1,484.44
SOTELO J	HAZARDOUS SUBSTNC ENGR	01/1999 12/1998	4.00	68.08
KRUG RE	HAZARDOUS SUBSTNC SCIEN	02/1999 01/1999	54.00	69.74
KRUG RE	HAZARDOUS SUBSTNC SCIEN	02/1999	45.00	1,273.20
CHRISTMANN CC	SR HAZARDOUS SUBSTNC ENGRNG	03/1999	1.00	33.74
FARKAS G	HAZARDOUS SUBSTNC SCIEN	03/1999	3.00	84.15
KRUG RE	HAZARDOUS SUBSTNC SCIEN	03/1999	43.00	1,155.80
SOTELO J	HAZARDOUS SUBSTNC ENGR	03/1999 12/1998	2.00	14.82
FARKAS G	HAZARDOUS SUBSTNC SCIEN	04/1999	27.00	797.29
KRUG RE	HAZARDOUS SUBSTNC SCIEN	04/1999	13.00	367.87
FARKAS G	HAZARDOUS SUBSTNC SCIEN	05/1999	37.00	1,170.60
KRUG RE	HAZARDOUS SUBSTNC SCIEN	05/1999	2.00	60.64
ALVAREZ NV	SUPVNG HAZARDOUS SUBSTNC SCI	06/1999	.50	18.96
FARKAS G	HAZARDOUS SUBSTNC SCIEN	06/1999	44.00	1,299.27
** Totals for PCA 11050 :				941.60 23,162.24

PCA: 11115 - PUBLIC PARTICIPATION PLAN DEVELOP/IMPLEM.

Name	Title	Adj.	Pay	Hours	Amount
KIMMEL JW	PUBLIC PARTICIPATION SPEC		07/1998	4.90	151.53
KIMMEL JW	PUBLIC PARTICIPATION SPEC		10/1998	4.80	130.36
KIMMEL JW	PUBLIC PARTICIPATION SPEC	01/1999	10/1998	4.80	15.04
KIMMEL JW	PUBLIC PARTICIPATION SPEC		03/1999	6.90	207.46

** Totals for PCA 11115 : 21.40 504.39

PCA: 12050 - REMEDIAL INVESTIGATIONS/FEASIBILITY STUDY

Name	Title	Adj.	Pay	Hours	Amount
ALVAREZ NV	SUPVNG HAZARDOUS SUBSTNC SCI		05/1999	.20	8.15

** Totals for PCA 12050 : .20 8.15

PCA: 12095 - CASE DEVELOPMENT & COST RECOVERY

Name	Title	Adj.	Pay	Hours	Amount
ALVAREZ NV	SUPVNG HAZARDOUS SUBSTNC SCI		02/1999	.70	29.10

** Totals for PCA 12095 : .70 29.10

PCA: 12115 - PUBLIC PARTICIPATION PLAN DEVELOP/IMPLEM.

SUMMARY BY ACTIVITY

DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)
P.O. Box 806
Sacramento, CA 95812-0806

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12.50.13

Site Name: HOLCHEM, INC.
Project Code: 300593

Reporting Period: 07/1995 to 07/1999

Name	Title	Adj.	Pay	Hours	Amount
MAYS T	PUBLIC PARTICIPATION SUPVR		08/1998	.20	6.60
** Totals for PCA 12115 :				.20	6.60
** DIRECT LABOR Totals:				1,028.60	25,653.28

INDIRECT LABOR - 1998/1999

FY	Months	Fund	Overhead Rate	Direct Labor	Overhead Charges
1997	Jan-Jun	HWCA 0014	1.5290	27.29	41.73
1998	Jul-Dec	TSCA 0557	1.6816	16,463.12	27,684.38
1998	Jan-Jun	TSCA 0557	1.8183	9,162.87	16,660.85
** INDIRECT LABOR Totals:				25,653.28	44,386.96

TRAVEL CHARGES - 1998/1999

	Fund	Amount
	0014	6.24
	0557	252.90
** TRAVEL Totals:		259.14
Total 1998/1999 Charges:		70,299.38

SUMMARY BY ACTIVITY

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DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)
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Trial, No 294
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Site Name: HOLCHEM, INC.
Project Code: 300593

Reporting Period: 07/1995 to 07/1999

DIRECT LABOR - 1999/2000

PCA: 11045 - ENFORCEMENT ACTIONS/AGREEMENTS

Name	Title	Adj.	Pay	Hours	Amount
ALVAREZ NV	SUPVNG HAZARDOUS SUBSTNC SCI		07/1999	2.60	103.56
BROWN G	STAFF COUNSEL		07/1999	5.50	179.73
JECHE H	SUPVNG HAZARDOUS SUBSTNC SCI		07/1999	2.00	70.83
** Totals for PCA 11045 :				10.10	354.12

PCA: 11050 - REMEDIAL INVESTIGATIONS/FEASIBILITY STDY

Name	Title	Adj.	Pay	Hours	Amount
FARKAS G	HAZARDOUS SUBSTNC SCIEN		07/1999	31.00	889.60
KRUG RE	HAZARDOUS SUBSTNC SCIEN		07/1999	1.00	26.32
** Totals for PCA 11050 :				32.00	915.92
** DIRECT LABOR Totals:				42.10	1,270.04

INDIRECT LABOR - 1999/2000

FY	Months	Fund	Overhead Rate	Direct Labor	Overhead Charges
1999	Jul-Dec	TSCA 0557	1.8291	1,270.04	2,323.03
** INDIRECT LABOR Totals:				1,270.04	2,323.03
Total 1999/2000 Charges:					3,593.07

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Trial, No 294
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Site Name: HOLCHEM, INC.
Project Code: 300593

Reporting Period: 07/1995 to 07/1999

TOTAL SITE CHARGES:

\$179,931.17

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: Department of Toxic Substances Control vs. Case No.: USDC Central Dist.
Holchem Inc. 99-12467 CM (BQRx)

I declare:

I am employed in the County of Los Angeles, California. I am 18 years of age or older and not a party to the within entitled cause; my business address is 300 So. Spring St., Los Angeles, CA 90013.

On March 20, 2000, I served the attached:

CONSENT DECREE

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, addressed as follows:

Richard Montevideo, Esq.
Rutan & Tucker, LLP
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I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on March 20, 2000, at Los Angeles, California.


DECLARANT

Statement of Completion of Work

EXHIBIT “2”

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DEPARTMENT OF JUSTICE



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December 13, 2006

Via Federal Express

Mr. Randy Zimbardo
120 White Plains Road, Suite 601
Tarrytown, New York 10591

RE: *Department of Toxic Substances Control, et al. v. Holchem, Inc., et al.*
No. 99-12467 (BQRx)
Chase Chemical Site, Pacoima, California
First Consent Decree - Statement of Completion of Work

Dear Mr. Zimbardo:

This letter is sent on behalf of the California Department of Toxic Substances Control ("Department") and each of the other named Plaintiffs in the above-referenced action.

This letter constitutes written confirmation that the "Work" required of Holchem, Inc. under the Consent Decree entered by the United States District Court in the above-entitled matter on April 25, 2000 (First Consent Decree), has been completed and that no further action or work is required of Holchem, Inc. (or of Soco West, Inc., successor to Holchem, Inc.) pursuant to the First Consent Decree.

Pursuant to Section XI.A of the First Consent Decree, the Covenants Not to Sue set forth in Section XI of that Decree have, therefore, become permanently binding, subject to the reservations of rights set forth in such First Consent Decree.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis A. Ragen", written over the word "Sincerely,".

DENNIS A. RAGEN
Deputy Attorney General

For **BILL LOCKYER**
Attorney General

cc: Robert Elliott, Esq.
Gabriel Farkas, Ph.D.
Richard Montevideo, Esq.

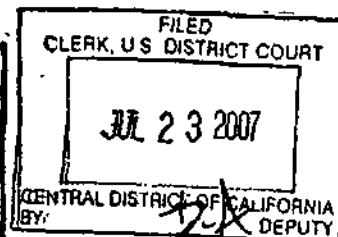
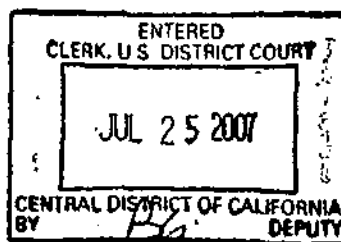
Second Consent Decree

EXHIBIT “3”

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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

THE CALIFORNIA DEPARTMENT OF
 TOXIC SUBSTANCES CONTROL; THE
 CALIFORNIA HAZARDOUS SUBSTANCES
 ACCOUNT; THE CALIFORNIA
 HAZARDOUS WASTE CONTROL
 ACCOUNT; THE TOXIC SUBSTANCES
 CONTROL ACCOUNT; and THE SITE
 REMEDIATION ACCOUNT,

CASE NO. CV99-1267CM

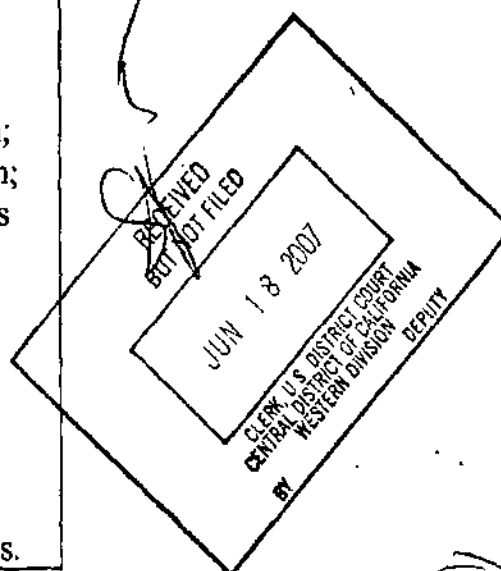
SECOND CONSENT DECREE

Plaintiffs,

v.

HOLCHEM, INC., a California corporation;
 SOCO WEST INC., a Delaware corporation;
 HERMAN BENJAMIN, individually and as
 trustee of the Benjamin Family Trust dated
 October 13, 1987; ISABEL BENJAMIN,
 individually and as trustee of the Benjamin
 Family Trust dated October 13, 1987; and
 CHASE CHEMICAL COMPANY, INC., a
 dissolved California corporation,

Defendants.



32

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1 Plaintiffs, the CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES
2 CONTROL (the "Department" or "DTSC"), the CALIFORNIA HAZARDOUS
3 WASTE CONTROL ACCOUNT, the CALIFORNIA HAZARDOUS
4 SUBSTANCE ACCOUNT, the TOXIC SUBSTANCES CONTROL ACCOUNT
5 and the SITE REMEDIATION ACCOUNT (each of these four State Accounts shall
6 collectively be referred to herein as the "State Accounts," and DTSC and the State
7 Accounts shall collectively be referred to herein as "Plaintiffs") originally filed a
8 complaint in this matter on November 30, 1999 (hereafter "Original Complaint"),
9 against HOLCHEM, INC. ("Holchem"), HERMAN BENJAMIN, individually and
10 as co-trustee of the Benjamin Family Trust dated October 13, 1987, ISABEL
11 BENJAMIN, individually and as co-trustee of the Benjamin Family Trust dated
12 October 13, 1987 and CHASE CHEMICAL COMPANY, INC., a dissolved
13 California corporation (Herman and Isabel Benjamin, both individually and as
14 trustees, and the Chase Chemical Company Inc. are hereafter collectively referred to
15 as the "Benjamin Defendants"). After the filing of the Original Complaint,
16 Holchem merged into Soco West, Inc. (hereafter "Soco West"). Plaintiffs thereafter
17 filed an amended Complaint to include Soco West as a defendant (the Complaint, as
18 amended, is hereinafter referred to as the "Complaint"). The Complaint sets forth
19 claims against Soco West and the Benjamin Defendants, pursuant to the
20 Comprehensive Environmental Response, Compensation, and Liability Act, 42
21 U.S.C. §9601, *et seq.*, as amended by the Superfund Amendments and
22 Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986)
23 ("CERCLA"), and includes a supplemental claim under California law, pursuant to
24 the Hazardous Substance Account Act, California Health and Safety Code § 25300,
25 *et seq.* (the "HSAA"). Portions of the claims asserted in the Complaint were
26 resolved by an earlier consent decree entered into in this action on April 25, 2000
27 ("First Decree").

28 ///

1 The Parties to this Second Consent Decree are the DTSC, the State Accounts,
2 and Soco West. The Parties enter into this Consent Decree (hereafter referred to
3 herein as the "Second Decree," "Decree" or "Consent Decree") in order to respond
4 to releases and/or threatened releases of hazardous substances in, on, under, or
5 migrating from the former Chase Chemical Facility located at 13540 and 13546
6 Desmond Street in Pacoima, California, pursuant to the terms of the remedy selected
7 for the Site (defined below) as set forth in the Remedial Action Plan (defined below)
8 approved by the DTSC on December 16, 2005.

9 Plaintiffs and Soco West agree that the terms and conditions of the First
10 Decree have been fully complied with, and that DTSC has issued a "Statement of
11 Completion" confirming that no further action or work of any kind remains to be
12 conducted under the First Decree. However, as provided under the First Decree, the
13 Work to be completed thereunder did "not include the activities necessary for the
14 implementation of the Remedial Action Plan for the Site." The purpose of this
15 Second Decree is to implement the Remedial Action Plan prepared in accordance
16 with the First Decree, and to resolve all remaining claims and/or remaining portions
17 of claims, alleged or which could have been alleged in the Complaint.

18 Accordingly, this Second Decree resolves all remaining claims or portions
19 thereof not resolved in the First Decree. Because, since the time the Original
20 Complaint was filed, Holchem merged into Soco West, Inc., the Original Complaint
21 was amended to reflect these corporate changes. In the Complaint, as amended, the
22 Plaintiffs assert that: (1) Soco West is the "owner" and "operator" of the Site, as
23 those terms are defined under CERCLA and the HSAA; (2) that the Benjamin
24 Defendants are past "owners" and/or "operators" of the Site; and (3) that Soco West
25 is liable for the costs that have been, or will be, incurred in response to releases
26 and/or threatened releases of hazardous substances at and/or from the Site. Soco
27 West and the Benjamin Defendants are individually and collectively referred to
28 herein as the "Defendants."

1 This Second Decree resolves all outstanding claims and portions thereof
2 asserted in the Complaint, subject to certain reservations of rights, and requires Soco
3 West to do the following: (1) to implement the Remedial Action Plan approved by
4 DTSC for the Site; (2) to pay the Past Costs DTSC has incurred with respect to the
5 Site, as provided for under the First Decree; and (3) to pay DTSC's ongoing and
6 future Site costs, including oversight costs, in accordance with the terms of this
7 Decree.

8 Soco West does not admit (i) that it is a liable party under CERCLA, the
9 HSAA or any other state or federal law or (ii) that it has any liability to Plaintiffs or
10 to any other person for any of the matters addressed in this Decree or in the
11 Complaint. Soco West further contends that the work to be performed under this
12 Second Decree, or portions of such work, are or may be necessary because of the
13 acts or omissions of other persons or entities who are not parties to this Decree.
14 Plaintiffs and Soco West agree that the actions undertaken by Soco West in
15 accordance with this Decree, therefore, do not constitute an admission of liability on
16 the part of either Soco West and/or any of its predecessors in interest, or the
17 Benjamin Defendants. Soco West does not admit (1) any of the facts set forth in the
18 Statement of Facts contained in Section III of this Consent Decree (SITE
19 BACKGROUND), or (2) any other allegations of fact or law set forth in this Decree,
20 the First Decree and/or in the Complaint. Soco West reserves its rights to
21 controvert any such allegations in any subsequent proceeding (other than a
22 proceeding to implement or enforce the terms of this Decree).

23 This Second Decree is entered into by DTSC pursuant to its authority under
24 Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, 42 U.S.C. § 9621,
25 *et seq.*, Section 7003 of RCRA, 42 U.S.C. § 6973 and California Health & Safety
26 Code ("H&SC") §§ 25100 *et seq.*, 25187, 25355.5, 25358.3, 25360, 58009 and
27 58010.

28 ///

1 Pursuant to the aforementioned authority and pursuant to CERCLA
2 § 113(f)(2), 42 U.S.C. § 9613(f)(2), Plaintiffs and Soco West each have stipulated
3 and agreed to the making and entry of this Second Decree, prior to the taking of any
4 testimony. Plaintiffs and Soco West agree that this settlement and entry of this
5 Second Decree are made in good faith, in an effort to avoid expensive and
6 protracted litigation and to benefit the environment and the community, without any
7 admission or finding of liability or fault as to any allegation or matter.

8 **NOW THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED,**
9 **AS FOLLOWS:**

10 **I. JURISDICTION**

11 The Court has jurisdiction over the subject matter of this action pursuant to 28
12 U.S.C. § 1331 and CERCLA, 42 U.S.C. § 9601 *et seq.*, and supplemental
13 jurisdiction over the claims arising under the laws of the State of California,
14 pursuant to 28 U.S.C. § 1367. Solely for the purposes of this Second Decree and the
15 underlying Complaint, Soco West waives service of summons and agrees to submit
16 to the jurisdiction of this Court and to venue in this District. Soco West agrees not
17 to challenge or object to entry of this Decree by the Court unless DTSC previously
18 has notified Soco West in writing that DTSC no longer supports entry of this Decree
19 or that DTSC seeks to modify this Decree. Plaintiffs and Soco West agree not to
20 challenge this Court's jurisdiction to enforce the terms of this Decree once it has
21 been entered.

22 **II. PARTIES BOUND**

23 A. The "Parties" to this Second Decree are Defendant Soco West, and
24 Plaintiffs, DTSC, the California Hazardous Waste Control Account, the California
25 Hazardous Substance Account, the Toxic Substances Control Account and the Site
26 Remediation Account.

27 B. Soco West has agreed to pay the amounts specified under Section VIII
28 of this Decree (PAYMENT OF DTSC COSTS) to undertake the Work and certain

1 other obligations as set forth in this Second Decree.

2 C. This Decree applies to and is binding upon the Plaintiffs and upon Soco
3 West and Soco West's predecessor corporations, including, without limitation,
4 Holchem, Inc., and Soco West's successors and assignees. Any change in
5 ownership, partnership status or corporate status of Soco West, including, but not
6 limited to, any transfer of assets or real or personal property, shall in no way alter
7 Soco West's rights or responsibilities under this Consent Decree.

8 D. Soco West shall be responsible and shall remain responsible for
9 carrying out all activities required of it under this Second Decree, and Soco West
10 shall remain obligated to carry out these activities notwithstanding any sale or
11 transfer of the Facility. In the event Soco West sells, leases or otherwise transfers
12 ownership or control of any portion of the Facility, Soco West shall secure the
13 transferee's full cooperation in carrying out Soco West's obligations under this
14 Decree.

15 E. Soco West shall be responsible for ensuring that its contractors and
16 subcontractors perform the Work contemplated herein in accordance with this
17 Second Decree. With regard to the activities undertaken pursuant to this Decree,
18 each contractor and subcontractor shall be deemed to be in a contractual relationship
19 with Soco West within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C.
20 § 9607(b)(3).

21 F. All actions taken by Plaintiffs pursuant to this Decree, including all
22 approvals, reservations of rights, and covenants not to sue are solely those of DTSC
23 and the other Plaintiffs, and of no other agencies of the State of California or the
24 United States.

25 **III. SITE BACKGROUND**

26 The following is a summary of the Site background as alleged by Plaintiffs:

27 **A. The Facility.**

28 The facility that is the subject of this Decree is the land and fixtures and

1 equipment thereon located at 13540 and 13546 Desmond Street, Pacoima, County
2 of Los Angeles, California, 91331 ("Facility"). A legal description of the Facility is
3 attached hereto as Exhibit "A".

4 **B. The Owner/Operators.**

5 Mr. & Mrs. Benjamin and Chase Chemical. From 1967 until 1987, Mr. and
6 Mrs. Herman Benjamin and certain Benjamin Family Trusts (hereinafter the
7 "Benjamin Entities") owned and/or operated Chase Chemical Company, Inc.
8 ("Chase Chemical"), a distributor of chemical hazardous substances that did
9 business at the Facility. Plaintiffs have alleged, and the Benjamin Defendants have
10 denied, that during the time that the Benjamin Defendants owned and/or operated
11 the Facility, hazardous substances were released onto the soils there or were
12 released into the subsurface groundwater.

13 Holchem. Effective July 1, 1987, Holchem purchased certain assets of Chase
14 Chemical and leased the Facility premises from the Benjamin Entities. Holchem
15 operated the Facility from July 1, 1987 until 2001. Plaintiffs allege, and Soco West
16 denies, that during the time of Holchem's operator status, hazardous substances
17 were released onto the soils or into the subsurface groundwater at the Site.

18 Ownership Transfer to Holchem. In November, 1999, the Benjamin Entities
19 transferred ownership and title to the Facility premises to Holchem. Holchem
20 agreed to indemnify the Benjamin Defendants against future cleanup costs for the
21 Site in the document entitled "Settlement Agreement and Mutual General Release"
22 dated November 11, 1999.

23 Merger Activity - Soco West. The Facility premises are currently owned by
24 Soco West, through a merger of Holchem into Soco West in July, 2001.

25 **C. Physical Description of the Facility.**

26 The Facility occupies approximately two acres in an industrial/residential area
27 of Pacoima in Los Angeles County. There are two buildings located on the Facility
28 previously used for offices, packaging, and warehouse space. The Facility is

1 presently covered by asphalt and concrete. The Facility also houses eighteen
2 Aboveground Storage Tanks ("AGSTs"), a drum rinse area with a clarifier that was
3 used for pH control, two sumps that were used for run-off protection, and a drum
4 storage area. The Facility formerly had housed nineteen Underground chemical
5 Storage Tanks ("USTs"), which were replaced in December 1998 with two 21,000
6 gallon and one 20,000 gallon double wall, multi-component USTs, which are now
7 empty. Because Holchem was in the business of distributing chemical products,
8 certain chemicals that were classified as hazardous substances were stored in the
9 AGSTs, USTs and containers at the Facility. There are nine monitoring wells
10 ("MWs") on the Facility, one groundwater extraction well along with two
11 groundwater observation wells. In addition there are nine groundwater monitoring
12 wells that have been installed off of the Facility property. The entire perimeter of
13 the Facility is fenced.

14 **D. Facility History and Operations.**

15 During the period from 1967 to 1987, in which the Benjamin Entities owned
16 and operated Chase Chemical, a large quantity of various chemicals that were
17 classified as hazardous substances were stored at the Facility and sold to other
18 companies. After Holchem purchased certain assets of Chase Chemical in 1987, it
19 operated the Facility as a lessee of the Benjamin Entities. Some chemicals which
20 are classified as hazardous substances and listed on the Facility's Product Lists,
21 have been found in Facility soils and beneath the Facility in the underlying
22 groundwater.

23 **E. Soil Contamination.**

24 As a result of the past operations at the Facility, the soil at the Site has been
25 contaminated with various chemicals classified as hazardous substances, including,
26 but not limited to, Acetone, Methyl Ethyl Ketone (MEK), 4-Methyl 2-Pentanone
27 (MIBK), 2-Hexanone, Methylene Chloride, 1, 1, 1 Trichloroethane (TCA),
28 Trichloroethylene (TCE), 1, 1-Dichloroethane (1, 1-DCA), 1, 2-Dichloroethane

1 (1, 2-DCA), Tetrachloroethylene (PCE) and other hazardous substances and
2 contamination.

3 **F. Groundwater Contamination.**

4 The groundwater beneath the Site has been contaminated with various
5 chemicals classified as hazardous substances, including but not limited to, Acetone,
6 MEK, MIBK, 2-Hexanone, TCA, 1, 1, 2 Trichloroethane, TCE, 1, 1-DCA, 1, 2-
7 DCA, PCE, 1, 1-Dichloroethylene (1, 1-DCE), Cis-1, 2-Dichloroethene (Cis-1, 2-
8 DCE), 1,4-dioxane, Trans-1, 2-Dichloroethene (Trans-1, 2-DCE) and other
9 classified hazardous substances and contamination.

10 **G. Regulatory History.**

11 Prior to DTSC's involvement and since 1988, the Regional Water Quality
12 Control Board ("RWQCB") had been overseeing the Site and required that
13 semiannual groundwater monitoring be conducted by the Benjamin Entities. In
14 1996, the RWQCB referred the Site to the United States Environmental Protection
15 Agency ("U.S. EPA") for further evaluation. U.S. EPA then tasked DTSC to
16 conduct a Preliminary Endangerment Assessment/Site Inspection ("PEA/SI"),
17 through a Cooperative Agreement between the two agencies. While performing the
18 PEA/SI, DTSC and U.S. EPA determined that the Site would be better addressed as
19 a DTSC-lead site. In 1996, the Site was removed from the Cooperative Agreement
20 and thereupon became a DTSC-lead site, and U.S. EPA is not presently asserting
21 jurisdiction over the Site.

22 On April 21, 1997, DTSC issued an Imminent and Substantial Endangerment
23 Order ("I&SE Order") to Holchem and the Benjamin Defendants. While the
24 Benjamin Defendants initially took timely steps toward compliance with the I&SE
25 Order, Plaintiffs alleged that the Benjamin Defendants did not comply with the
26 I&SE Order, and DTSC consequently served them with a notice of noncompliance
27 with that Order. Holchem disputed any liability or responsibility under the I&SE
28 Order. On May 21, 1997, Holchem filed a Petition for Writ of Mandate and a

1 Complaint for a Preliminary and Permanent Injunction against DTSC in Los
2 Angeles County Superior Court, LASC Case No. BS045143, wherein Holchem
3 alleged, among other things, that Holchem was not provided an opportunity, as
4 required by law, to present its defenses to the I&SE Order and that Holchem was not
5 a responsible party for the contamination at issue. On or about August 21, 1997,
6 pursuant to a stipulation between Holchem and DTSC, LASC Case No. BS045143
7 was dismissed, without prejudice, pending the negotiation of a CERCLA Consent
8 Decree between DTSC, Holchem and the Benjamin Defendants. Such negotiations
9 led to the entry of the First Decree.

10 **H. The First Consent Decree.**

11 On April 25, 2000, this Court entered a Consent Decree ("First Decree") with
12 respect to the Site. The parties to the First Decree were Plaintiffs herein, Holchem,
13 the Holchem Related Parties, and the Benjamin Defendants. Soco West was not
14 identified as a party thereto, since, at the time the First Decree was entered,
15 Holchem had not yet merged into Soco West Inc., but did so thereafter, effective
16 July 2, 2001. The First Decree required the Defendants to, among other things, do
17 the following:

18 Holchem was required (1) to design and implement certain "removal"
19 action(s) necessary to minimize the spread of hazardous substances from the
20 Facility, such as installing, operating and maintaining a soil vapor extraction
21 and air sparging system; (2) to prepare and complete a Remedial
22 Investigation/Feasibility Study (RI/FS) for the site, consistent with USEPA's
23 "Guidance for Conducting Remedial Investigations and Feasibility Studies
24 under CERCLA," dated October 19, 1988 and "Data Quality Objectives for
25 Remedial Response Activities," dated March 1987, and any updated
26 Guidance documents in connection therewith. The purpose of the RI/FS was
27 to assess site conditions, to fully characterize the nature and extent of the
28 site's classified hazardous substance contamination, and to evaluate

1 alternatives to the extent necessary to select a remedy appropriate for the site;
2 (3) to prepare a Remedial Action Plan for the Site; (4) to assist the DTSC with
3 the preparation of any necessary California Environmental Quality Act
4 (CEQA) documentation for response actions to be performed at the site; and
5 (5) to pay certain costs that Plaintiffs had incurred or would incur with respect
6 to the Site.

7 The Benjamin Defendants were required to pay \$35,000 toward the
8 costs Plaintiffs incurred with respect to the Site.

9 The First Decree did not address implementation of the remedial work for the
10 Site to be implemented pursuant to the RAP. Instead, the parties specifically
11 contemplated that once the RAP was prepared and approved in accordance with the
12 First Decree, Holchem and DTSC would enter into negotiations toward a new
13 consent decree that would implement the remedy selected in the RAP. DTSC has
14 now issued a Statement of Competition that the work required pursuant to the First
15 Decree has been completed, and that no further action or work of any kind remains
16 to be conducted under the First Decree. Nothing in this Second Decree is intended
17 to in any way modify the COVENANTS NOT TO SUE as provided under
18 Section XI of the First Decree, the RESERVATION OF RIGHTS as provided under
19 Section XII of the First Decree, or the CONTRIBUTION PROTECTION provided
20 under Section XIII of the First Decree, nor is this Second Decree intended to in any
21 way alter any other of the terms or provisions of the First Decree.

22 **I. The RAP.**

23 On December 16, 2005, the Department approved the Final Remedial Action
24 Plan ("RAP") for the Site, dated December 6, 2005. The RAP generally provides
25 for a remedy consisting of institutional controls in the form of a covenant to restrict
26 use of the property ("Covenant for Environmental Restrictions"); continued
27 operation of the soil vapor extraction and air sparging systems; the design,
28 installation and implementation of a groundwater pump and treatment systems for

1 source removal and containment of contamination; and monitored natural
2 attenuation of the contaminants. Through this Decree, Soco West is agreeing to
3 implement the Site remedy as set forth in the DTSC approved RAP.

4 **J. Hazardous Substances.**

5 The contaminants found at the Site include chemicals classified as hazardous
6 substances as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and
7 H&SC §§ 25316 and 25317.

8 **K. Releases.**

9 There have been releases and threatened releases of hazardous substances at
10 the Site.

11 **L. Facility.**

12 The property located at 13540 and 13546 Desmond Street in Pacoima,
13 California is a "facility" as that term is defined by Section 101(9) of CERCLA, 42
14 U.S.C. § 9601(9).

15 **M. Person/Operator.**

16 Soco West is a "person," as that term is defined by Section 101(21) of
17 CERCLA, 42 U.S.C. § 9601(21) and H&SC § 25319, who is, and through its
18 corporate predecessors in interest, has been, (i) the owner and/or operator of the
19 Facility from which there has been a release or threatened release of hazardous
20 substances, (ii) the operator of the Facility at the time of a release and threatened
21 release of hazardous substances.

22 **IV. DEFINITIONS**

23 Unless otherwise expressly provided herein, terms used in this Consent
24 Decree that are defined in CERCLA, or in regulations promulgated under CERCLA,
25 shall have the meaning assigned to them therein. Whenever terms listed below are
26 used anywhere in this Decree or its exhibits, if any, the following definitions shall
27 apply:

- 28 1. "CERCLA" shall mean the Comprehensive Environmental

1 Response, Compensation, and Liability Act of 1980, as amended by the Superfund
2 Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613
3 (1986), 42 U.S.C. §§ 9601, et seq., as amended.

4 2. "Second Decree," "Consent Decree," or "Decree" shall mean this
5 Second Consent Decree and its attachments and exhibits.

6 3. "Contractor" shall mean the individual, company or companies
7 retained by or on behalf of Soco West, to undertake and complete the Work.

8 4. "Day" shall mean a calendar day unless expressly stated to be a
9 working day. In computing any period of time under this Decree, where the last day
10 would fall on a Saturday, Sunday, or State or Federal holiday, the period shall run
11 until the close of business of the next working day.

12 5. "Facility" is defined at Section 101(9) of CERCLA, 42 U.S.C.
13 §9601(9), and for purposes of this Decree, shall mean that property and all fixtures
14 and equipment thereon, located at 13540 and 13546 Desmond Street, Pacoima,
15 California. A legal description of the Facility is attached as Exhibit "A" to this
16 Decree.

17 6. "Holchem Related Parties" shall mean all such parties as defined
18 in the First Decree, specifically, Holchem's present and former officers, directors,
19 shareholders, agents, employees, contractors, consultants, receivers, trustees,
20 successors and assignees, including but not limited to, individuals, partners, and
21 subsidiary, parent and affiliated corporations.

22 7. "National Contingency Plan" or "NCP" shall refer to the
23 National Oil and Hazardous Substances Pollution Contingency Plan promulgated
24 pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R.
25 Part 300.

26 8. "Oversight" shall mean inspection, review, advice, direction and
27 comments performed or provided by DTSC, its contractors, or its representatives,
28 with respect to any of the following actions taken by Soco West or its agents

1 pursuant to this Decree: (1) any investigatory, removal or remedial activities;
2 (2) any plans, assessments or reports; and (3) the performance of the Work;
3 "Oversight" shall also include any actions, including but not limited to, sampling,
4 testing or analysis, taken by DTSC, its contractors or its representatives, that are
5 necessary to verify or ensure the adequacy of the Work or of any other activity
6 undertaken, or proposed to be undertaken by Soco West or its agents pursuant to this
7 Decree.

8 9. "Parties" shall mean Defendant, Soco West, and Plaintiffs,
9 DTSC and the State Accounts.

10 10. "Past Response Costs" shall mean all the costs and expenses,
11 including, but not limited to, interest, that DTSC has incurred on behalf of Plaintiffs
12 with regard to the Site, up until the Effective Date of this Consent Decree.

13 11. "Plan(s)" or "Workplan(s)" shall mean the plans and designs
14 developed by or on behalf of Soco West that detail the elements of the Work to be
15 conducted pursuant to this Consent Decree, and shall include, but not be limited to,
16 the RAP and the remedial design plans referenced in this Decree.

17 12. "RCRA" shall mean the Solid Waste Disposal Act, as amended,
18 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery
19 Act).

20 13. "Remedial Action Objective(s)" or "RAOs" shall mean those
21 Remedial Action Objectives as set forth in the RAP.

22 14. "Remedial Action Plan" or "RAP" shall mean that document
23 entitled "Final Remedial Action Plan Former Chase Chemical Site," dated
24 December 6, 2005, which document was submitted to, and was approved by the
25 DTSC on December 16, 2005.

26 15. "Report(s)" shall mean the reports developed by Soco West in
27 compliance with this Decree, detailing the Work and the results of its
28 implementation.

1 16. "Site" shall mean the vertical and areal extent of Waste Material
2 and any and all other contamination, located in, on, under, or migrating from, the
3 Facility located at 13540 and 13546 Desmond Street in Pacoima, California,
4 whether in soil, air, surface water or ground water. The Site shall be designated as
5 the "Former Chase Chemical Company Site."

6 17. "Soco West Related Parties" shall mean Soco West, and Soco
7 West's present and former officers, directors, shareholders, agents, employees,
8 contractors, consultants, receivers, trustees, attorneys, predecessors, successors, and
9 assigns, including, but not limited to individuals, partners, subsidiaries, and parent
10 and affiliated corporations.

11 18. "State Accounts" shall mean the California Hazardous Waste
12 Control Account, the California Hazardous Substances Account, the Toxic
13 Substances Control Account and the Site Remediation Account, to the extent they
14 expend funds with respect to the Site on behalf of DTSC.

15 19. "Waste Material" shall mean (1) any "hazardous substance" as
16 defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), that is in, on,
17 under or migrates or threatens to migrate, to any soil, air, surface water and/or
18 groundwater at the Site; (2) any "hazardous substance" as defined under California
19 H&SC §§ 25316 and 25317, that is in, or threatens to migrate to any air, soil,
20 surface water and/or groundwater at the Site; or (3) any "hazardous waste" as
21 defined under H&SC § 25117.

22 20. "Work" shall mean the implementation, in accordance with, and
23 from and after the Effective Date this Decree, of the tasks and activities defined
24 herein, including but not limited to: Section VI (GENERAL OBLIGATIONS
25 RESPECTING WORK TO BE PERFORMED); Section VII (SPECIFIC WORK
26 TO BE PERFORMED); and such Work as may be added or modified pursuant to
27 the provisions of this Decree; and any schedules or plans required to be submitted
28 pursuant to this Decree. The term "Work" includes all of the activities necessary for

1 the design and implementation of the RAP for the Site.

2 21. "Work Oversight Costs" shall mean all costs incurred by the
3 Plaintiffs in Oversight of the Work. Work Oversight Costs shall include: payroll
4 costs, overhead costs, contractor costs, laboratory costs, the costs incurred pursuant
5 to Subsection VI.J (Site Access), and the costs of reviewing or developing plans,
6 reports and other items pursuant to this Decree, verifying the Work, or costs
7 incurred to implement or enforce this Consent Decree, from and after the Effective
8 Date of this Decree. Work Oversight Costs do not include any costs incurred by
9 DTSC in oversight of activities that are beyond the scope of this Decree. Activities
10 that fall within the scope of this Decree include the Work and any other activities
11 necessary for the implementation of the RAP.

12 **V. GENERAL PROVISIONS**

13 **A. Purposes.**

14 The purposes of this Decree are:

15 **1. Work.**

16 To protect public health and welfare and the environment from releases or
17 threatened releases of Waste Material at or from the Site by the completion of the
18 following Work: Design and implementation of the RAP for the Site.

19 **2. Resolution of Claims.**

20 To fully and finally resolve all claims that the Plaintiffs have or could have
21 asserted against the Defendants in the Complaint in this matter.

22 **B. Compliance With Applicable Law.**

23 All activities undertaken by Soco West pursuant to this Consent Decree shall
24 be performed in accordance with the requirements of all applicable federal, state and
25 local laws and regulations, including the NCP. All parties agree that the Work, if
26 performed in accordance with the requirements of this Decree, is consistent with the
27 NCP.

28 ///

1 **C. No Findings By DTSC.**

2 This Decree in no way constitutes a finding by DTSC as to the risks to human
3 health or the environment that may be posed by contamination at the Site. This
4 Decree does not constitute a representation by DTSC that the Site, or any part
5 thereof, is fit for any particular purpose.

6 **VI. GENERAL OBLIGATIONS RESPECTING WORK TO BE**
7 **PERFORMED**

8 **A. Project Coordinator.**

9 Soco West identifies the following person as Project Coordinator for the
10 activities that are required under this Decree:

11 Name: Mr. Ralph J. Zimbardo, President, Soco West, Inc.

12 Address: 120 White Plains Road, Tarrytown, NY 10591

13 Telephone: (914) 366-7250

14 It shall be the responsibility of the Project Coordinator to receive all notices,
15 comments, approvals, and other communications from DTSC. Soco West shall
16 promptly notify DTSC of any change in the identity of the Project Coordinator.

17 **B. Communication and Coordination.**

18 Soco West shall communicate and coordinate with DTSC in accordance with
19 the Communication and Coordination Plan (CCP) currently in effect with respect to
20 the Site. In the future, Soco West shall amend the CCP if necessary, subject to
21 approval by DTSC.

22 **C. Project Engineer/Geologist.**

23 The Work performed pursuant to this Decree shall be under the direction and
24 supervision of the following professional engineer and/or registered geologist:

25 Name: Mr. Greg Fiol, Arcadis

26 Address: 1400 N. Harbor Blvd., Suite 700, Fullerton, CA. 92835

27 Telephone: (714) 278-0992

28 Soco West may replace the Project Engineer/Geologist subject to the following

1 conditions: The replacement Project Engineer/Geologist shall be a qualified
2 professional engineer or geologist registered in the State of California, who shall
3 have expertise in hazardous substance site cleanup including at least two CERCLA
4 RI/FS equivalent projects where remediation costs exceeded \$1,000,000. Within
5 forty-five (45) days prior to any such replacement, Soco West shall submit for
6 DTSC review and approval: (a) the name(s) and address(es) of the replacement
7 project engineer and/or geologist chosen by Soco West; and (b) in order to
8 demonstrate necessary expertise in hazardous substance cleanup, the resume(s) of
9 the engineer and/or geologist, and the statement of qualifications of the consulting
10 firm responsible for the work.

11 **D. Quarterly Summary Reports.**

12 Within ninety (90) days from the Effective Date of this Decree, and every
13 calendar quarter thereafter, Soco West shall submit a Quarterly Progress Report of
14 its activities under the provisions of this Decree. The report shall be received by
15 DTSC by the 30th of the month following the end of the quarter, and shall describe:

- 16 (1) Specific actions taken by or on behalf of Soco West during the
17 previous quarter;
- 18 (2) Actions expected to be undertaken during the current quarter;
- 19 (3) All planned activities for the next quarter;
- 20 (4) Any requirements under this Decree that were to have been
21 completed by such quarter, but were not completed;
- 22 (5) Any problems or anticipated problems in complying with this
23 Decree; and
- 24 (6) All results of sample analyses, tests, and other data generated
25 under this Decree during the previous quarter, and any
26 significant findings from these data.

27 DTSC may at any time, for good cause, instruct Soco West to submit such
28 reports on a monthly basis where the submission of monthly reports is necessary and

1 appropriate under the circumstances.

2 **E. Quality Control/Quality Assurance ("QC/QA").**

3 All sampling and analysis conducted by Soco West under this Decree shall be
4 performed in accordance with QC/QA procedures submitted by Soco West and
5 approved by DTSC pursuant to this Decree.

6 **F. Submittals.**

7 All submittals and notifications from Soco West required by this Decree shall
8 be sent to:

9 Sayareh Amir, Chief
10 Southern California Cleanup Operations Branch – Glendale Office
11 Department of Toxic Substances Control
12 Attention: Chase Chemical Project Manager
13 1011 N. Grandview Avenue
14 Glendale, California 90201

15 and to such other persons as are determined by DTSC.

16 **G. Communications.**

17 All approvals and decisions of DTSC made regarding submittals and
18 notifications will be communicated to Soco West in writing by the Site Mitigation
19 Cleanup Operations Branch Chief, Department of Toxic Substances Control, or
20 his/her designee. No informal advice, guidance, suggestions or comments by DTSC
21 regarding reports, plans, specifications, schedules or any other writings by Soco
22 West, shall relieve Soco West of the obligation to obtain such formal approvals as
23 may be required.

24 **H. DTSC Review and Approval.**

25 If DTSC determines that any report, plan, schedule or other document
26 submitted for its review and approval pursuant to this Decree fails to comply with
27 this Decree or fails to adequately protect public health or safety or the environment,
28 DTSC may:

(1) Modify the document as deemed necessary and return the
document, as modified, to Soco West, for Soco West's resubmission;

(2) Return written comments to Soco West, with recommended changes and a reasonable date by which Soco West is to submit a revised document incorporating the changes to DTSC. Upon receipt of the revised document, DTSC may either (i) approve the document as revised, or (ii) modify the document as reasonably necessary and approve the document as modified.

Soco West shall comply with any modifications, comments or other directives issued pursuant to paragraphs (1) and (2) above, unless timely disputed by Soco West in accordance with the dispute resolution provisions set forth in Section IX of this Decree (Dispute Resolution).

I. Compliance With Applicable Laws.

Soco West shall carry out this Decree in compliance with all applicable state, local, and federal requirements including, but not limited to, requirements to obtain permits and to assure worker safety.

J. Site Access.

To the extent access to the Site, or laboratories used for analyses of samples under this Decree, is within the control of Soco West, upon receipt of reasonable notice requesting access, Soco West shall provide access at all reasonable times to employees, contractors, and consultants of DTSC. DTSC shall notify all such employees, contractors and consultants of the existence of the subject Waste Materials at the Site, and that the Site had been used for the storage and distribution of various chemicals, hazardous substances and hazardous materials. Accordingly, DTSC employees, contractors and consultants entering the Site will comply with all reasonable safety and security procedures, including those provided to them by Soco West, or its consultants or contractors. Nothing in this Subsection is intended or shall be construed to limit in any way the right of entry or inspection that DTSC or any other agency may otherwise have by operation of any law. After providing reasonable notice to Soco West, DTSC and its authorized representatives shall have the authority to enter and move safely about all property at the Site, at all reasonable

1 times, for purposes of ensuring compliance with this Decree, including, but not
2 limited to: inspecting records, operating logs, sampling and analytic data, and
3 contracts relating to the Site; reviewing the progress of Soco West in carrying out
4 the terms of this Decree; conducting such tests as DTSC may deem necessary; and
5 verifying the data submitted to DTSC by Soco West.

6 **K. Sampling, Data and Document Availability.**

7 Soco West shall permit DTSC and its authorized representatives to inspect
8 and copy all sampling, testing, monitoring or other data generated by Soco West, or
9 on Soco West's behalf, pertaining to Work undertaken pursuant to this Decree that
10 is not privileged or protected in accordance with sections 25358.2 and 25511 of the
11 Health and Safety Code, except that Soco West shall produce protected documents
12 as provided for under said sections, which, upon receipt of such documents by
13 DTSC, will be treated as protected and confidential by DTSC in accordance with
14 said sections. Soco West shall submit all such data upon the request of DTSC.
15 Copies shall be provided within seven (7) days of receipt of DTSC's written request.
16 Soco West shall inform DTSC at least seven (7) days in advance of all field
17 sampling under this Decree, and shall allow DTSC, and its authorized
18 representatives, to take duplicates of any samples collected by Soco West pursuant
19 to this Decree. DTSC shall make its public records file of Site reports, workplans,
20 comments, technical information and all related information concerning the Site,
21 available to Soco West for its review and consideration, during normal business
22 hours, upon receiving reasonable notice from Soco West to review and/or copy the
23 same.

24 **L. Record Retention.**

25 All data, final reports and other documents prepared pursuant to this Decree
26 shall be preserved by Soco West for a minimum of six (6) years after the conclusion
27 of all activities under this Decree. If DTSC requests that some or all of these
28 documents be preserved for a longer period of time, Soco West shall either comply

1 with that request or deliver the documents to DTSC. Soco West shall notify DTSC
2 in writing at least two (2) months prior to destroying any documents prepared
3 pursuant to this Decree.

4 **M. Government Liabilities.**

5 The State of California shall not be liable for any injuries or damages to
6 persons or property resulting from acts or omissions of Soco West, or any of its
7 contractors, agents, successors or assigns in carrying out activities pursuant to this
8 Decree, nor shall the State of California be held to be a party to any contract entered
9 into by Soco West, or its agents, in carrying out activities under this Decree.

10 **N. Additional Actions.**

11 Except as expressly provided herein, by entering into this Decree, DTSC does
12 not waive the right to take any further actions authorized by law.

13 **O. Stop Work Order.**

14 In the event that DTSC determines that Soco West's conducting of any
15 activity (whether or not pursued in compliance with this Decree) may pose an
16 imminent or substantial endangerment to the health or safety of people on the Site,
17 or in the surrounding area or to the environment, DTSC may order Soco West to
18 stop further implementation of such activity for such period of time needed to abate
19 the endangerment (hereafter "Stop Work Order"). In the event DTSC determines
20 that any Site activities not pursued in compliance with this Decree, are proceeding
21 without DTSC authorization, DTSC may order Soco West to stop further
22 implementation of such Site activities for such period of time needed to obtain
23 DTSC authorization, if such authorization is appropriate. Any deadline in this
24 Decree directly affected by a Stop Work Order shall be extended for the term of the
25 Stop Work Order.

26 **P. Emergency Response Action/Notification.**

27 In the event of any emergency requiring emergency response, such as a fire,
28 earthquake or explosion, or other similar event causing or potentially causing an

1 unacceptable human exposure to Waste Materials, as a result of a release or
2 threatened release of Waste Materials at the Facility, during the course of this
3 Decree, Soco West shall immediately take all appropriate action to prevent, abate, or
4 minimize such emergency, release, or immediate threat of release and shall
5 immediately notify the Project Manager. Soco West shall take such action in
6 consultation with the Project Manager and in accordance with all applicable
7 provisions of this Decree. Within seven (7) days of the onset of such an event, Soco
8 West shall furnish a report to DTSC, signed by Soco West's Project Coordinator,
9 setting forth the events that occurred and the measures taken in the response thereto.
10 In the event that Soco West fails to take appropriate response action and DTSC
11 takes the action instead, DTSC may seek to recover the costs of its response action
12 from Soco West. Nothing in this Section shall be deemed to limit any other
13 notification requirement to which Soco West may otherwise be subject to by
14 operation of law.

15 **Q. Extension Requests.**

16 If Soco West is unable to perform any activity or submit any document within
17 the time required under this Decree, Soco West may request an extension of the time
18 in writing. The extension request shall include a justification for the delay. All such
19 requests shall be in advance of the date on which the activity or document is due.

20 **R. Extension Approvals.**

21 If DTSC determines that good cause exists for an extension, DTSC will grant
22 the request and specify a new schedule in writing. Soco West shall comply with the
23 new schedule established by DTSC.

24 **VII. SPECIFIC WORK TO BE PERFORMED**

25 **A. Activity Schedule.**

26 Not later than thirty (30) days from the Effective Date of this Consent Decree,
27 Soco West shall submit to DTSC, for its review and approval, a schedule that
28 provides specific time frames and dates for completion of each activity and each

1 report required by this Decree.

2 **B. Public Participation Plan ("PPP").**

3 Soco West shall continue to implement the current Public Participation Plan
4 ("PPP"), in order to keep the public and the adjoining community informed
5 respecting Site activities. Necessary changes to the PPP must be developed in
6 accordance with DTSC's Public Participation Policy and Guidance Manual, July
7 1994, as updated February 1997, and must be approved by DTSC.

8 **C. Health and Safety Plan.**

9 Soco West shall implement the existing Health and Safety Plan ("H&SP"),
10 with amendments, after DTSC approves the Remedial Design Plan (defined below)
11 provided to DTSC of the design of the Work necessary to implement the RAP. The
12 amendments to the current H&SP shall be prepared in accordance with federal (29
13 CFR Section 1910.120) and state (Title 8, CCR Section 5192) regulations
14 addressing the implementation activities, including construction site safety. The
15 amended H&SP shall be submitted to DTSC, for its review and approval, within
16 sixty (60) days after DTSC's approval of the Remedial Design Plan (defined below).

17 **D. Sampling and Analysis Plan and Quality Assurance Project Plan.**

18 Within thirty (30) days of the Effective Date, Soco West shall submit, for
19 DTSC's review and approval, an amended Sampling and Analysis Plan ("SAP") for
20 field and laboratory analysis activities. The SAP will address sampling and tests
21 conducted during RAP implementation. The Quality Assurance Project Plan
22 ("QAPP") will be amended and submitted to DTSC, for DTSC's review and
23 approval, with the SAP, and will address the quality assurance and quality control
24 measures to be employed during implementation of the RAP.

25 **E. Continuation of Removal Systems.**

26 To the extent provided for under the RAP, Soco West shall continue to
27 operate and maintain the following Removal Actions installed pursuant to
28 Section XII.B (Removal Actions) of the First Decree, except that DTSC may

1 provide Soco West written approval to terminate any one or more of such Removal
 2 Actions because (i) the applicable Remedial Action Objective, as described in the
 3 RAP, has been achieved, or (ii) such Removal Actions are no longer necessary to
 4 implement the RAP, or have been superceded by other measures implemented or to
 5 be implemented pursuant to the RAP:

- 6 1. The Site perimeter fencing and warning signs.
- 7 2. Groundwater monitoring of the existing groundwater monitoring
- 8 wells.
- 9 3. The soil vapor extraction system.
- 10 4. The air sparging system.

11 **F. Remedial Design and Implementation.**

12 **1. Remedial Design.**

13 Within sixty (60) days after the Effective Date, Soco West shall submit a
 14 draft Remedial Design Plan (Draft RD) for the Site. The Draft RD shall include
 15 drawings, specifications, and detailed plans and timetables for implementing and
 16 monitoring the implementation of each aspect of the remedy described in the RAP,
 17 as well as, if appropriate, the implementation of a pilot study(ies) (hereinafter "RD
 18 Implementation"), as needed to assist in the development of any remedial
 19 technology or system described in the RAP. Included with the draft RD shall be a
 20 draft of the Covenant for Environmental Restrictions that is to be a part of the
 21 remedy set forth in the RAP. DTSC shall comment on the draft RD, and within
 22 thirty (30) days after receipt of such comments from DTSC, Soco West will submit,
 23 for DTSC's review and approval, a final Remedial Design Plan ("Remedial Design
 24 Plan") which incorporates DTSC's comments, except that Soco West retains its
 25 rights to challenge the inclusion of such comments through the Dispute Resolution
 26 Process (Section IX of this Decree).

27 **2. Remedial Implementation.**

28 Not later than thirty (30) days following DTSC's approval of the Remedial

1 Design Plan, Soco West shall commence implementation of the RAP for the Site,
2 consistent with the terms of the approved Remedial Design Plan. Soco West shall
3 proceed to implement the RAP for the Site until such time as DTSC determines that
4 such RAOs have been achieved, and, has issued the Statement of Completion, as
5 provided under Section X (SATISFACTION AND CERTIFICATION) of this
6 Decree.

7 **3. Continued Implementation of Remedy.**

8 The remedial technology or systems employed in implementation of the RAP
9 shall continue to be operated by Soco West until: (i) DTSC confirms in writing, the
10 RAOs have been achieved; (ii) DTSC specifically authorizes Soco West, in writing,
11 to discontinue, move or modify some or all of the specific remedial technology or
12 systems; (iii) DTSC approves, in writing, an alternative remedial technology or
13 system, which DTSC allows to be used in place of, and/or in addition to, all or any
14 portion of any remedial technology or systems described in the RAP or in the
15 Remedial Design Plan; or (iv) DTSC has issued the Statement of Completion as
16 provided for under Section X (SATISFACTION AND CERTIFICATION) of this
17 Decree.

18 **G. Quarterly Reports.**

19 Included with the Quarterly Progress Reports submitted to DTSC pursuant to
20 Subsection VI (Quarterly Summary Reports), Soco West shall provide DTSC with
21 quarterly reports of the analytical results generated by each of the remedial
22 technologies or systems implemented under the RAP. If DTSC determines that
23 conditions warrant, DTSC may instruct Soco West to submit these reports on a more
24 or less frequent basis.

25 **H. Data Gaps.**

26 In the event DTSC identifies any material data gaps regarding Site
27 characterization, Soco West shall submit a technical memorandum for DTSC's
28 review and approval, addressing the need for additional data. If DTSC thereafter

1 reasonably concludes that additional data is necessary because of material data gaps
2 in existing data, Soco West shall obtain and evaluate the necessary additional data.

3 **I. Remedy Effectiveness Review.**

4 In order for DTSC to assess remedy effectiveness, Soco West shall submit a
5 Remedy Review Report ("RRR") five (5) years after the Effective Date, and every
6 five (5) years thereafter, until the Statement of Completion, as provided under
7 Section X (SATISFACTION AND CERTIFICATION) of this Decree, has been
8 provided. The five-year interval may be modified if DTSC reasonably determines
9 that more or less frequent Remedy Review Reports are warranted. The Remedy
10 Review shall be conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C.
11 Section 9601 et seq., as amended by the Superfund Amendments and
12 Reauthorization Act (SARA) of 1986, to determine if human health and the
13 environment are being protected, as well as to consider the appropriateness of new
14 and/or alternative remedial technologies or systems to be used, in place of, or in
15 addition to, the remedial technologies or systems being implemented. The RRR
16 shall describe the results of significant sample analyses, tests and other data
17 generated or received by Soco West pursuant to this Decree, and shall evaluate the
18 adequacy of the implemented remedy in protecting public health, safety and the
19 environment. The requirements of the RRR are separate and independent from any
20 inspection and reporting requirements contained in any Covenant for Environmental
21 Restrictions provided for under the RAP.

22 **J. Changes During Remedial Design Implementation.**

23 During RD Implementation, DTSC may specify reasonable additions,
24 modifications or revisions to the Remedial Design Plan that are consistent with the
25 NCP, if said additions, modifications or revisions are necessary to achieve the RAOs
26 specified in the RAP. Soco West shall resubmit any plans, modifications or
27 revisions to the Remedial Design Plans within a reasonable time from the date of
28 DTSC's notification of modification or other change, but retains its rights to

1 challenge the inclusion of such modifications and revisions through the Dispute
2 Resolution Process (Section IX of this Decree). During RD Implementation, Soco
3 West may propose reasonable additions, modifications or revisions to Work
4 activities under this Decree, that are consistent with the NCP, including changes to
5 the RAP or the Remedial Design Plan. These proposed additions, modifications or
6 revisions by either DTSC or Soco West, may include alternative remedial
7 technologies or systems, including in-situ remediation and bioventing, and new or
8 alternative methods of remediation that may substitute in place of, or be used in
9 addition to, the remedial technologies or systems identified in the RAP or in the
10 Remedial Design Plan. Soco West may request such proposed additions,
11 modifications, or revisions through the submission of technical memoranda and
12 supporting documents to DTSC, which memoranda are to identify the data and
13 explain the rationale supporting the proposed addition(s), modifications(s) and/or
14 revisions(s). DTSC shall review and provide a written response to, and/or approval
15 or disapproval of, the technical memoranda submitted by Soco West, whereby upon
16 approval of any such technical memoranda, the RAP and/or the Remedial Design
17 Plan, as the case may be, shall be deemed revised as provided for in the technical
18 memoranda, along with the Work therefore to be conducted.

19 **VIII. PAYMENT OF DTSC COSTS**

20 **A. Past Response Costs.**

21 Pursuant to the terms of the First Decree, Soco West shall remain obligated to
22 pay, and shall pay, DTSC's Past Costs incurred in accordance with the First Decree,
23 up to and until the later of the Effective Date of this Decree, or the issuance of the
24 Statement of Completion of the First Decree, except that Soco West shall retain all
25 rights to object to and challenge all such DTSC Past Costs in accordance with and
26 pursuant to the terms of the First Decree. The amount of these Past Costs shall be
27 calculated and payment shall be made in accordance with the terms of the First
28 Decree.

1 **B. Work Oversight Costs.**

2 DTSC will provide Soco West with an accounting of all Work Oversight
3 Costs and shall provide quarterly bills for those Work Oversight Costs incurred in a
4 manner not inconsistent with the NCP. In billing and/or seeking to recover any and
5 all Work Oversight Costs under this Decree, DTSC shall comply with the
6 requirements of State law, specifically including, but not limited to, the
7 requirements of California Health & Safety Code section 25269 et seq., and shall
8 afford Soco West all rights and due process as provided under State law.

9 Soco West shall provide notice of any challenge to the quarterly bill for Work
10 Oversight Costs, by letter mailed to DTSC within sixty (60) days of Soco West's
11 receipt of the quarterly bill. The challenge will then be subject to the dispute
12 resolution provisions of this Decree.

13 Unless challenged by Soco West as permitted by this Decree, Soco West shall
14 pay the Work Oversight Costs by check within sixty (60) days after receipt of the
15 quarterly bill. The check shall be payable to the California Department of Toxic
16 Substances Control, and shall reference "Former Chase Chemical Site - Project
17 No. 300593." The check shall be sent to:

18 California Department of Toxic Substances Control
19 Attention: Accounting Unit
20 Former Chase Chemical Site, Project No. 300593
21 P.O. Box 806
22 Sacramento, California 95812-0806

23 A copy of the transmittal letter and a copy of the check shall be sent to the
24 Project Coordinator and DTSC's Project Manager at the address specified in
25 Subsection VLF (Submittals).

26 **IX. DISPUTE RESOLUTION**

27 **A. Informal Dispute Resolution.**

28 Should Soco West object to any DTSC decision, action or inaction under this
Decree, Soco West shall notify DTSC of its objections, in writing, within thirty (30)
days after receipt of any such decision or action, or within thirty (30) days of receipt

1 of notice of any DTSC inaction. (All such decisions, actions or inactions are
2 hereafter collectively referred to as "DTSC Decisions." For purposes of this
3 Subsection, DTSC decisions do not include deadlines for submissions of documents
4 pursuant to this Decree.) Should Soco West disagree with any item of Work
5 Oversight Costs, Soco West shall notify DTSC of its objections within sixty (60)
6 days of receipt of the quarterly bill. Within thirty (30) days from submission of such
7 written objections, DTSC and Soco West shall meet and confer in an attempt to
8 reach agreement on the DTSC Decision. At the end of this meet and confer period,
9 or any time after meeting or conferring with Soco West, DTSC shall provide a
10 written statement of its decision to Soco West, which written statement shall be
11 considered the Final Decision of DTSC on the issue ("Final Decision"), unless Soco
12 West seeks review under the Formal Dispute Resolution procedures, where such
13 procedures apply. However, nothing in this Subsection should be construed as
14 altering or limiting Soco West's legal rights to
15 challenge any DTSC Decision or Final Decision, to the extent that such a challenge
16 is permitted under State or federal law.

17 **B. Formal Dispute Resolution.**

18 **1. Limitations.**

19 Formal dispute resolution under this Section, including any dispute regarding
20 any final document, is exclusively limited to disputes regarding the provisions
21 described in Subsections VI.H (DTSC Review and Approval); VI.O (Stop Work
22 Order); and Sections VII (SPECIFIC WORK TO BE PERFORMED); VIII
23 (PAYMENT OF DTSC COSTS); X (SATISFACTION AND CERTIFICATION);
24 and XIV (FORCE MAJEURE). Formal dispute resolution shall proceed as
25 described in the following Subsection IX.B.2.

26 **2. Further Challenge by Soco West.**

27 If Soco West disagrees with any Final Decision concerning any issue within
28 the scope of Subsection IX.B.1, within thirty (30) days after receipt of the Final

1 Decision, Soco West may appeal such Final Decision (hereafter "Challenge") to the
2 Deputy Director of Site Mitigation, Department of Toxic Substances Control (the
3 "Arbiter") or, in the Deputy Director's extended absence, to the Deputy Director's
4 designee. Within forty-five (45) days of receipt of any Challenge, the Arbiter shall
5 receive written evidence and testimony concerning the Final Decision, and shall
6 determine whether such Final Decision is reasonably necessary or appropriate in
7 light of the overall objectives of this Decree. The Arbiter shall issue a written
8 decision affirming the action of DTSC, setting aside the Final Decision of DTSC, or
9 amending the Final Decision of DTSC, as appropriate. The Arbiter's written
10 decision shall set forth the reasons for the ruling, and shall be rendered in
11 accordance with all applicable state and federal laws. The Arbiter's decision shall
12 be the Administrative Decision of the DTSC ("Administrative Decision"), and shall
13 become binding unless Soco West seeks review by this Court as provided in the
14 following paragraph.

15 **3. Review by This Court.**

16 Any Administrative Decision as described above, shall be reviewable by this
17 Court, provided that Soco West files a "Notice of Appeal of DTSC Administrative
18 Decision" with the Court and serves it on DTSC, within thirty (30) days of receipt of
19 the Administrative Decision. DTSC and Soco West may extend the thirty (30) day
20 time period within which a Notice of Appeal of DTSC Administrative Decision is to
21 be filed with the Court. Judicial review shall be limited to the administrative record
22 as a whole. The Notice of Appeal of the DTSC Administrative Decision shall
23 include: (i) a description of the matter in dispute, (ii) the efforts made by the parties
24 thereto to resolve it, and (iii) the relief requested. Within thirty (30) days of DTSC's
25 receipt of such Notice of Appeal of DTSC Administrative Decision, or within any
26 other schedule set forth by the Court, DTSC may file a response to said Notice.
27 Unless use of some other standard of review is required by law for the disputed
28 matter that is before the Court, Soco West will have the burden of proving, based on

1 the weight of the evidence in the administrative record, as a whole (1) that the
2 Administrative Decision was not supported by the weight of the evidence in the
3 administrative record, was arbitrary or capricious, or was otherwise not consistent
4 with State or federal law, or (2) when the Administrative Decision involves DTSC's
5 Work Oversight Costs, that the costs incurred by DTSC were not consistent with the
6 NCP or this Consent Decree, or were otherwise not in accordance with State or
7 federal law.

8 **C. Soco West's Work Obligations During Dispute Resolution.**

9 Notwithstanding the invocation of the procedures stated in this Section, Soco
10 West shall continue to perform its undisputed obligations under this Second Decree,
11 including those that are not materially affected by the disputed issue(s). For all
12 disputed obligations, and those materially affected by the disputed obligations, such
13 obligations are to be suspended pending a conclusion of the Formal Dispute
14 Resolution process under this section, and Soco West shall not be considered in
15 violation of this Decree for failing to comply with the disputed obligations and those
16 materially affected by the same, while either the Informal or Formal Dispute
17 Resolution procedures are pending.

18 **D. Obligations After Resolution of Dispute.**

19 If the Court decides in DTSC's favor on any Administrative Decision, or
20 portion thereof, then, unless Soco West's obligations are stayed by an order of this
21 Court, Soco West shall fulfill its obligation to pay costs or implement the disputed
22 matter resolved against it, and perform the work which was the subject of the
23 dispute in accordance with the Court's decision. The appropriate plans should be
24 amended to reflect the resolution of the dispute. If the Court finds in Soco West's
25 favor, then, unless a stay is issued by this Court, DTSC will comply with the Court's
26 decision, and Soco West need only comply with the disputed Administrative
27 Decision as finally determined by the Court. On any Administrative Decision or
28 portion thereof, the deadlines for any affected deliverables shall be extended to

1 account for any delays attributable to the Dispute Resolution procedures, and such
2 affected deliverables shall be modified so as to be consistent with the Court's
3 decision.

4 **X. SATISFACTION AND CERTIFICATION**

5 If Soco West fulfills its obligations by performing the activities required
6 under this Decree, i.e., the design and implementation of the remedies under the
7 RAP so that the RAOs specified therein have been attained, Soco West's obligations
8 for the Work required under this Decree shall be deemed to be fully satisfied and
9 completed. Within sixty (60) days after DTSC determines Soco West has fulfilled
10 its obligations under this Decree, DTSC shall issue to Soco West a written statement
11 that all Work and all obligations required of Soco West pursuant to this Decree,
12 have been fully and finally completed (Statement of Completion), and that no
13 further action or environmental investigation, assessment, monitoring, treatment,
14 removal or remedial or cleanup work of any kind or nature is or will be required for
15 the Site, except as may be permitted by Sections XI.C (LIMITATIONS ON
16 COVENANTS NOT TO SUE) and Section XII (RESERVATION OF RIGHTS).
17 Soco West, the Soco West Related Parties, Holchem, the Holchem Related Parties,
18 and the Benjamin Defendants shall be protected by the Covenants Not To Sue in
19 Section XI (COVENANTS NOT TO SUE), and from all claims for contribution as
20 provided by Section XIII (CONTRIBUTION PROTECTION), starting from the
21 Effective Date of this Second Decree, and continuing for so long as Soco West is in
22 substantial compliance with the terms of this Decree, which protections shall
23 become permanently binding thereafter following the issuance of the Statement of
24 Completion.

25 **XI. COVENANTS NOT TO SUE**

26 **A. Covenants Not to Sue for Site Remediation Activities and Costs.**

27 In consideration of the actions that will be performed and the payments that
28 will be made by Soco West under the terms of this Decree, and except as

1 specifically provided for in this Section, DTSC and the State Accounts covenant not
 2 to sue or to take any administrative action against Soco West, the Soco West
 3 Related Parties, Holchem, the Holchem Related Parties, and/or the Benjamin
 4 Defendants, pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606
 5 and 9607, Sections 3008(h), 3013 or 7003 of RCRA, ^{42 (cont.)} 43 U.S.C. §§ 6928(b), 6934 or
 6 6973, or H&SC §§ 25100, *et seq.*, 25300, *et seq.*, or any other federal or state
 7 statute, regulation, or common law concerning or relating to: (1) the Site, (2) the
 8 Work, (3) Past Response Costs, (4) Work Oversight Costs, (5) declaratory relief,
 9 and (6) civil penalties or injunctive relief, all to the extent that they concern or in
 10 any way relate to releases or threatened releases of Waste Materials or any other
 11 contamination, in, on, under, or in any way migrating to or from the Site. This
 12 covenant also includes the passive migration of Waste Materials or other
 13 contamination in, on, under, or from the Site.

14 **B. Covenants Immediately Effective**

15 All Plaintiffs' covenants not to sue are conditioned upon the substantial
 16 compliance by Soco West with all of its obligations under this Decree, but shall take
 17 effect on the Effective Date of this Decree, and shall continue so long as Soco West
 18 substantially complies with the terms of this Decree. These covenants not to sue
 19 shall become permanently binding to the benefit of all of the parties identified in this
 20 Section, upon the issuance of the Statement of Completion described in Section X
 21 (SATISFACTION AND CERTIFICATION).

22 **C. Limitations on Covenants Not to Sue**

23 Soco West, the Soco West Related Parties, Holchem and the Holchem
 24 Related Parties are not released from any matter not addressed by this Consent
 25 Decree, and they are not released from the following claims:

- 26 1. Any claim based on a failure by Soco West to meet the
- 27 obligations of this Decree;

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1 2. Claims based on the liability for arising from the past, present or
2 future disposal of Waste Materials at disposal sites other than the Site.

3 3. Claims based on criminal liability; at present, however, Plaintiffs
4 have no pending criminal claim or investigation against any of the parties
5 identified in this Section.

6 4. Claims based on liability for Waste Materials removed from the
7 Site.

8 5. Liability for any violations of federal or state law which occur
9 during implementation of the Work.

10 6. Rights reserved by the DTSC and the State Accounts in
11 Section XII (RESERVATION OF RIGHTS).

12 **D. Claims Against Other Persons and Entities**

13 Nothing in this Consent Decree shall constitute or be construed as a release or
14 covenant not to sue regarding any claim or cause of action against any "person" as
15 defined in Section 101(21) of CERCLA or H&SC § 25319, other than DTSC, the
16 State Accounts, Soco West, the Soco West Related Parties, Holchem, the Holchem
17 Related Parties, and the Benjamin Defendants, for any liability they may have
18 arising out of or relating to the Site.

19 **E. Other Rights Reserved By All Parties**

20 Except as otherwise provided in this Decree, Plaintiffs and Soco West
21 expressly reserve all rights and defenses that they have or may have. Nothing in this
22 Decree shall be deemed to limit the response authority of the Plaintiffs under H&SC
23 § 25358.3 or under any other response authority, except to the extent of the
24 covenants not to sue under this Section.

25 **F. Soco West's Covenant Not to Sue**

26 Except as otherwise permitted under the First Decree or this Second Decree,
27 Soco West hereby covenants not to sue Plaintiffs, and agrees not to assert any
28 claims or causes of action against Plaintiffs, arising out of any prior acts or

1 omissions or oversight activities of Plaintiffs, with respect to the Site, including but
2 not limited to:

3 1. Any direct or indirect claim for reimbursement from the
4 Hazardous Waste Control Account, Hazardous Substance Account, the Site
5 Remediation Account or the Hazardous Substance Cleanup Fund, or any
6 successor fund through H&SC Section 25375 or any other provision of law.

7 2. Any claims against the Plaintiffs under CERCLA §§ 107 or 113
8 for any prior acts, oversight activities or alleged omissions by DTSC related
9 to the Site.

10 3. Any claims against the Plaintiffs arising out of prior response
11 activities, or prior oversight activities or omissions by DTSC at the Site,
12 including but not limited to nuisance, trespass, takings or equitable indemnity
13 and indemnity under California law, contribution under California or federal
14 law, and negligence or strict liability under California or federal law.

15 Nothing in this Decree shall be construed to limit, impair, or prejudice any
16 tort or governmental immunities available to Plaintiffs under any applicable law,
17 arising out of its oversight activities at the Site or under this Decree.

18 **XII. RESERVATIONS OF RIGHTS**

19 **A. Obligations Under this Decree**

20 Except as otherwise provided in this Decree, Soco West expressly reserves
21 any and all rights, including, but not limited to, rights of contribution or
22 indemnification, for all costs, losses, liabilities and damages incurred by Soco West
23 in connection with the Site, or for complying with the requirements of this Decree.

24 In the event DTSC initiates any legal proceedings against Soco West for non-
25 compliance with this Decree, Soco West shall not contest the validity of this Decree;
26 Soco West, however, expressly reserves all other rights and defenses with respect to
27 any such proceeding or any other cause of action or proceeding, including all rights
28 provided to it under this Decree.

1 **B. Claims Regarding Other Sites**

2 Nothing in this Decree is intended or shall be construed to limit the rights of
3 Plaintiffs or Defendants with respect to claims arising out of or relating to the
4 deposit, release or disposal of hazardous substances at any location other than the
5 Site subject to this Decree. This Subsection XII.B, however, shall not limit the
6 covenants not to sue and releases provided in this Decree, that apply to claims
7 arising from the spread or passive migration of Waste Materials, or other
8 contamination, to, in, on, under, or from the Site.

9 **C. Claims Against Other Persons and Entities**

10 DTSC retains all of its legal and equitable rights against all persons, except as
11 otherwise provided in this Decree. The legal and equitable rights retained by DTSC
12 include, but are not limited to, the right to compel any person, other than Soco West,
13 the Soco West Related Parties, Holchem, the Holchem Related Parties, or the
14 Benjamin Defendants, to take response actions for hazardous substance
15 contamination at the Site and to seek reimbursement against such persons for any
16 past, present or future costs incurred by DTSC with respect to the Site.

17 **D. Reservation of Claims**

18 Notwithstanding any other provision of this Decree, Plaintiffs reserve the
19 right to assert, and any covenants not to sue in this Decree shall not apply with
20 respect to, any claims or causes of action against Soco West, either administrative or
21 judicial, arising from any of the following:

- 22 1. Claims based on the failure of Soco West to meet a requirement
23 of this Decree.
- 24 2. The introduction of any new or additional hazardous substance,
25 pollutant, or contaminant to the Site in the future, other than any Waste Materials or
26 other contamination presently existing in, on, under, or migrating to or from the
27 Site;

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- 1 3. Willful interference with the remediation of the Site;
2 4. Future transportation and disposal of hazardous substances from
3 the Site;
4 5. Willful misconduct by Soco West that exacerbates any Waste
5 Material at the Site, including, but not limited to, the exacerbation of Waste
6 Materials existing at the Site as of the Effective Date of this Decree.

7 **E. Other Rights Reserved**

8 Soco West hereby waives any defenses of *res judicata*, collateral
9 estoppel, equitable estoppel, laches and claim-splitting based on the existence of this
10 Decree or the First Decree, with respect to DTSC's rights to pursue subsequent
11 litigation to compel Soco West to comply with this Decree or to take additional
12 actions to the extent permitted in the following Subsection XII.F (ADDITIONAL
13 RESPONSE ACTIONS).

14 **F. Additional Response Actions.**

15 Notwithstanding any other provision of this Decree, the Plaintiffs reserve,
16 and this Decree is without prejudice to, the right to institute proceedings in this
17 action or in a new action, or to issue an administrative order seeking to compel
18 Soco West or the Soco West Related Parties to (1) perform further response actions
19 relating to the Site, or (2) reimburse the Department Plaintiffs for additional
20 Response Costs related to the Site, if, at any time, the following occurs: Conditions
21 at the Site unknown to DTSC as of the Effective Date of this Decree, are
22 discovered, or information unknown to DTSC as of the Effective Date of this
23 Decree, is received, and these previously unknown conditions or information, either
24 by themselves or together with any other relevant information, indicate that the
25 remedy set forth in the RAP is not protective of human health and the environment.

26 For purposes of this section, the information and the conditions known to
27 DTSC shall include all information and conditions set forth in (i) all submittals to
28 DTSC, and all responses to such submittals by DTSC under the First Decree,

1 including but not limited to, all information and conditions that concern or relate to
2 the Remedial Investigation, the Feasibility Study, the Baseline Risk Assessment, the
3 Public Health Evaluation, and the RAP; (ii) all information and conditions presently
4 or previously referenced in DTSC's files that concern the Site, the Facility, or any
5 nearby sites or facilities; (iii) the entire administrative record concerning the RAP,
6 and all prior approvals and/or decisions leading up to the submission of the RAP;
7 and (iv) any other written information or referenced conditions, received by DTSC
8 prior to the Effective Date of this Decree, that concern, or in any way relate to the
9 Site, the Facility or any Waste Materials or other pollutants or contamination
10 existing in, on, under, or migrating to or from the Site.

11 **XIII. CONTRIBUTION PROTECTION**

12 With regard to any claims for contribution, equitable indemnity, declaratory
13 relief or apportionment of fault, against Soco West, the Soco West Related Parties,
14 Holchem, the Holchem Related Parties, and the Benjamin Defendants, for matters
15 addressed in this Decree, the Parties agree, and the Courts finds as follows:

16 A. This Decree constitutes a judicially approved settlement within the
17 meaning of CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2).

18 B. This Decree requires that Soco West pay certain costs and undertake
19 certain response actions at the Site. Accordingly, upon substantial compliance with
20 the obligations imposed upon Soco West by this Decree, the parties described above
21 will have resolved any liability to DTSC and the State Accounts, for all matters as
22 described in Section XI (COVENANTS NOT TO SUE) of this Decree, and all
23 matters as described in Section XI (COVENANTS NOT TO SUE) under the First
24 Decree.

25 C. Soco West, the Soco West Related Parties, Holchem, the Holchem
26 Related Parties, and the Benjamin Defendants are entitled to the Contribution
27 Protection provided by CERCLA § 113(f)(2), 42 U.S.C. Section 9613(f)(2), and as
28 provided by State law, for all "matters addressed" in this Consent Decree, as defined

1 below.

2 D. The "matters addressed" in this Consent Decree, subject to
3 Subsection XI.C and Section XII of this Decree, include (1) the Work under this
4 Decree and under the First Decree; (2) Past Response Costs under this Decree and
5 under the First Decree; (3) Work Oversight Costs as defined under this Decree and
6 under the First Decree; (4) any costs or expenses of any kind or nature, incurred or
7 to be incurred by any person with respect to the Work under this Decree or under the
8 First Decree, or with respect to any related Past Response Costs and/or Work
9 Oversight Costs; (5) any response costs or other costs, fees and/or any expenses of
10 any kind or nature, incurred or to be incurred by any person, prior to, during or after
11 the time that Soco West is completing or has completed the Work in substantial
12 compliance with this Decree, with respect to any Waste Materials or other pollutants
13 or contamination, of whatever kind or nature, in, on, under, or migrating from the
14 Site, whether in soil, air, water, or any other media; and (6) any response, removal
15 and/or remedial actions performed or to be performed at the Site, prior to and/or
16 after the Effective Date of this Decree, that concern or in any way relate to the
17 existence, release or threatened release of Waste Materials or other pollutants or
18 contamination, of whatever kind or nature, in, on, under or migrating from the Site.

19 E. Except as otherwise expressly provided herein, nothing in this Section
20 shall limit the Plaintiffs' rights against any third person or entity that is not a party to
21 this Decree, including, without limitation, DTSC's right to enforce a cleanup of the
22 Site and to recover any response costs associated with that cleanup.

23 F. In the event that the contribution protection afforded by this Section
24 XIII (CONTRIBUTION PROTECTION) is challenged in a judicial or
25 administrative action, the DTSC agrees to provide briefing and argument in support
26 of the contribution protection that is provided by this Section.

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1 **XIV. FORCE MAJEURE**

2 Soco West shall cause all Work to be performed within the time limits set
3 forth in this Decree unless an extension is approved or performance is delayed by
4 events that constitute an event of force majeure. For purposes of this Decree, an
5 event of force majeure is an event arising from circumstances beyond the control of
6 Soco West that delays performance of any obligation under this Decree, provided
7 that Soco West has undertaken all appropriate planning and prevention measures to
8 avoid any foreseeable circumstances. Increases in cost of performing the Work
9 specified in this Decree shall not be considered circumstances beyond the control of
10 Soco West. For purposes of this Decree, events which constitute a force majeure
11 shall include, without limitation, events such as acts of God, war, civil commotion,
12 unusually severe weather, labor difficulties, shortages of labor, materials or
13 equipment, government moratoriums, delays in obtaining necessary permits,
14 licenses, or approvals due to actions or inactions by DTSC or other third parties,
15 earthquake, fire, flood or other casualty. In addition, any unavoidable delay in
16 obtaining the right of access for Soco West to the Site or any off-Site area shall also
17 constitute an event of force majeure. Delay caused by an event of force majeure
18 shall be deemed not to be a violation of this Decree, and this delay shall not be
19 counted in determining the time during which such work shall be completed, or such
20 act performed, whether such time be designated by a fixed date, a fixed time or a
21 reasonable time, and such time shall be deemed to be extended for the effective
22 period of the delay equal to the actual days lost attributable to the effect of the event
23 of force majeure. Soco West shall notify DTSC in writing as soon as practicable
24 after the occurrence of the force majeure event. Such notification shall describe, to
25 the extent known, the anticipated length of the delay, the cause or causes of the
26 delay, the measures taken and to be taken by Soco West to minimize the delay and
27 the timetable by which these measures will be implemented. If DTSC does not
28 agree that the delay is attributable to a force majeure, then the matter may be subject

1 to the dispute resolution procedures set forth in Section IX of this Decree
2 (DISPUTE RESOLUTION).

3 **XV. NO ADMISSION OF LIABILITY**

4 The actions undertaken by Soco West in accordance with this Consent Decree
5 do not constitute an admission of liability for any purpose, by Soco West or on the
6 part of any of the Defendants, and nor do they constitute a waiver of any rights or
7 claims that such parties have or may have against any other party or person, except
8 as otherwise provided in this Consent Decree with respect to claims against the
9 Plaintiffs. Neither this Consent Decree, the First Decree, nor any drafts of this
10 Decree or the First Decree, are to be introduced as evidence in any other proceeding
11 for the purposes of establishing any alleged liability with respect to the Site on the
12 part of any of the Defendants herein.

13 **XVI. FUTURE SETTLEMENTS**

14 DTSC agrees that it will notify Soco West of negotiations with any other
15 party that is potentially liable for the cleanup of the contamination at the Site, and
16 that it will permit Soco West to participate in such negotiations to the extent that the
17 negotiations may lead to a proposed consent decree or settlement agreement that
18 may adversely affect the rights of Soco West to recover response costs or obtain
19 contribution for costs Soco West incurs pursuant to this Decree. As part of this
20 process, DTSC nonetheless reserves the right to meet and negotiate in confidence
21 with any other potentially responsible party in the absence of Soco West.

22 Plaintiffs and Soco West agree that any funds received by Plaintiffs from any
23 other persons as a result of any administrative consent order, consent decree, or
24 similar settlement with respect to the Site, shall be used only for the following
25 purposes (1) to reimburse DTSC and other governmental agencies for unreimbursed
26 costs they have incurred or will incur at the Site that are not inconsistent with the
27 NCP; (2) to fund cleanup and investigatory work needed at the Site that has not been
28 successfully undertaken by Soco West or other parties, or (3) to fund, to the extent

1 permitted by law, an interest bearing, site-specific account, which shall be used to
2 pay for assessment, monitoring or cleanup work at the Site that is not inconsistent
3 with the NCP.

4 **XVII. CLAIMS AGAINST OTHER PERSONS**

5 Nothing in this Decree shall in any way constitute a waiver or release of any
6 claims and rights that Plaintiffs or Defendants have or may have against any other
7 potentially responsible party for the Site, and except as otherwise provided in this
8 Decree, Plaintiffs and Soco West reserve any and all rights they have or may have
9 against any prior owners and/or operators of the Site, and/or any other potentially
10 responsible parties.

11 **XVIII. FULL AND COMPLETE DECREE**

12 This Second Decree, along with the First Decree, contain all of the covenants
13 and agreements between Plaintiffs, on the one hand, and Defendants, on the other,
14 with respect to the Site, and Plaintiffs and Soco West acknowledge that no
15 representation, inducement, promise or agreement has been made by or on behalf of
16 any of the Parties except those covenants and agreements embodied in the First
17 Decree and in this Second Decree. No agreement, statement or promise not
18 contained in the First Decree or this Second Decree shall be valid or binding as
19 between Plaintiffs on the one hand, and Defendants on the other, unless the
20 agreement is in writing, signed by the party to be bound and, where appropriate,
21 approved by the Court.

22 **XIX. PUBLIC COMMENT**

23 This Decree shall be subject to a public comment period of not less than thirty
24 (30) days. Notice of the proposed entry of this Decree shall be published in the
25 California Regulatory Notice Register. If DTSC receives comments that disclose
26 facts or considerations indicating that this Decree is inappropriate, improper or
27 inadequate, then DTSC may (i) withdraw its agreement to this Decree, or (ii) seek to
28 modify this Decree with the consent of Soco West.

1 **XX. NOTICE TO THE UNITED STATES AND U.S. E.P.A.**

2 Within fifteen (15) days of the date that this Decree is signed by all Parties,
3 DTSC will serve copies of this Decree and the Complaint, as amended, on the
4 Administrator of the U.S. EPA, the Attorney General of the United States and the
5 offices of U.S. EPA, Region IX.

6 **XXI. EFFECTIVE DATE**

7 The Effective Date of this Decree is the date upon which the Court enters an
8 order approving this Decree.

9 **XXII. RETENTION OF JURISDICTION**

10 Notwithstanding any dismissal of this action, this Court retains jurisdiction
11 over both the subject matter of the Complaint and this Decree, for the purposes of
12 enabling any of the Plaintiffs and/or Defendants to apply to this Court at any time
13 for such further order or relief as may be necessary or appropriate for Dispute
14 Resolution in accordance with Section IX (DISPUTE RESOLUTION) of this
15 Decree, or to effectuate the terms of this Decree or enforce compliance with this
16 Decree.

17 **XXIII. MISCELLANEOUS**

18 A. The Parties to this Decree understand and agree that this Decree is
19 being entered into for the benefit of the DTSC, the State Accounts, Soco West, the
20 Soco West Related Parties, Holchem, the Holchem Related Parties, and the
21 Benjamin Defendants, and that the Soco West Related Parties, Holchem, the
22 Holchem Related Parties, and the Benjamin Defendants are all recognized third-
23 party beneficiaries to this Decree, with all rights as may be provided to them
24 hereunder, including but not limited to, rights to the protections provided to them
25 under Section XI (COVENANTS NOT TO SUE) and Section XIII
26 (CONTRIBUTION PROTECTION), and any other benefits and protections
27 conferred upon such third-parties by this Decree.

28 B. Each undersigned representative of DTSC and Soco West certify that

1 he or she is fully authorized to enter into the terms and conditions of this Decree,
2 and to execute and legally bind such party to this Decree.

3 C. A copy of this Decree may be recorded with respect to the Facility
4 property with the Los Angeles County Recorder, and a legal description of the
5 Facility property is attached hereto as Exhibit "A." The terms of this Decree shall
6 be binding on future owners and operators of the Facility. The obligations of future
7 owners and operators of the Facility shall be further specified in any Covenant for
8 Environmental Restrictions that may be recorded against the Facility.

9 D. This Decree is entered into and shall be construed and interpreted in
10 accordance with the laws of the State of California.

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1 E. Soco West shall identify, on the attached signature page, the name and
2 address of an agent who is authorized to receive notice on behalf of Soco West with
3 respect to all matters arising under or relating to this Decree. Soco West hereby
4 agrees to receive notice in that manner.

5
6 SO ORDERED, this 23 day of July, ²⁰⁰⁷~~2006~~

7
8 Henry B. Collin
9 United States District Judge

10
11 The California Department of Toxic
12 Substance Control; The California
13 Hazardous Substance Account; The
14 California Hazardous Waste Control
15 Account; The Toxic Substances Control
16 Account; and the Site Remediation
17 Account

18 DATED: 3-30-2007

19 By: Sayareh Amir
20 Sayareh Amir
21 CHIEF, SOUTHERN CALIFORNIA
22 CLEANUP OPERATIONS
23 BRANCH, GLENDALE OFFICE.
24 CALIFORNIA DEPARTMENT OF
25 TOXIC SUBSTANCES CONTROL

26 SOCO WEST, INC.

27 DATED: Dec 18, 2006

28 By: Ralph J. Zimbardo
Its: President

Name and Address of Person authorized to
receive notice on behalf of Soco West
pursuant to this Decree

Ralph J. Zimbardo, President
Soco West, Inc.
120 White Plains Road
Tarrytown, NY 10591
Telephone: (914) 366-7250

**Settlement Agreement and
Mutual General Release**

EXHIBIT “4”

SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

This Settlement Agreement and Mutual General Release is entered into by and among Los Angeles By-Products Co., a California corporation ("By-Pro"), Holchem Inc., a California corporation ("Holchem"), Herman Benjamin and Isabel Benjamin, individually and as Trustees of The Benjamin Family Trust Dated October 13, 1987 ("Benjamin"), and Chase Chemical Company Inc., a dissolved California corporation ("Chase"). The settling parties shall hereafter be referred to as the "Parties" or the "Party," as context dictates.

RECITALS

A. The United States of America and the State of California ("State"), filed separate First Amended Complaints pursuant to Sections 107 and 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended 42 U.S.C. §§ 9607 and 9613. The actions were consolidated under the lead case entitled United States of America v. Allied-Signal, Inc., et al., Civil Case No. 93-6490 MRP (Tx) and 93-6570 MRP (Tx) and are presently pending before the United States District Court of the Central District of California. In the complaints, the plaintiffs seek recovery of response costs incurred by the plaintiffs in connection with actions taken pursuant to CERCLA in response to releases and threatened releases of hazardous substances from facilities in the San Fernando Valley Groundwater Basin ("Basin"), and at the North Hollywood Operable Unit Site ("NHOU Site") within the Basin.

B. By-Pro was named as a defendant in the consolidated actions based upon allegations of actual or threatened releases into the environment of hazardous substances from its facilities located at 8251 Tujunga Avenue, Sun Valley, California, which alleged releases or threatened releases were alleged to cause the plaintiffs to incur response costs.

C. By-Pro filed a second amended third party complaint in the consolidated actions, seeking declaratory relief and contribution from Holchem alleging that a release or threatened release occurred at a facility operated by Holchem. Thereafter, Holchem filed a counter-claim against By-Pro for contribution, indemnity and declaratory relief. At the time of filing the counter-claim, Holchem also filed a third party complaint against Chase, and Herman Benjamin, seeking, *inter alia*, contribution and indemnification. Thereafter, Herman Benjamin filed a counter-claim against Holchem, seeking, *inter alia*, contribution, indemnification, and declaratory relief. The aforementioned third party complaints, and counter-claims, (all of which are based upon the United States of America's and or State's claims for the 1987 NHOU ROD Response Costs and Past Basinwide Response Costs as those terms are defined and interpreted in the Second Partial Consent Decree), and shall hereinafter be collectively referred to as the "Action."

D. Each Party hereto denies any liability in connection with the alleged respective claims set forth in the Action.

E. By-Pro reached a compromised settlement agreement with the United States and the State, the terms of which are embodied in the Second Partial Consent Decree to be executed, a copy of which is attached hereto and referenced as Exhibit "1."

F. The Parties to this Agreement wish to settle the Action and to become Parties to the Second Partial Consent Decree.

THEREFORE, the Parties to this Settlement Agreement and Mutual General Release, ("Agreement"), in consideration of the mutual promises and agreements to be performed, as set forth below, agree as follows:

TERMS OF AGREEMENT

1. Obligations of Benjamin.

A. Benjamin agrees to pay directly to the United States of America the sum

of \$42,300.00 and to pay the State of California the sum of \$2,700.00, for a total sum of \$45,000.00.

- B. Within ten (10) days of receipt of By-Pro's dismissal with prejudice of its third party complaint against Holchem, Herman Benjamin agrees to file a voluntary dismissal with prejudice of its counter-claim in the Action and deliver endorsed file copies thereof to the remaining Parties hereto.

2. Obligations of By-Pro. Within ten (10) days after payment by Benjamin, as set forth in Paragraph 1.A., By-Pro agrees to file a voluntary dismissal with prejudice of its third-party complaint in the Action against Holchem, and deliver endorsed file copies thereof to the remaining Parties hereto.

3. Obligations of Holchem.

- A. Within ten (10) days of receipt of By-Pro's dismissal with prejudice of its third party complaint against Holchem, Holchem agrees to file a voluntary dismissal with prejudice of its counter-claim and third party complaint in the Action and deliver endorsed file copies thereof to the remaining Parties hereto.

- B. Holchem is not contributing any sum of money, whatsoever, to fund the settlement set forth in this Agreement, or in the Consent Decree.

4. Signatories to Second Partial Consent Decree. The Parties hereto will become signatories to the Second Partial Consent Decree and receive the contribution protection afforded thereby.

5. Attorney's Fees and Costs. Each Party is to bear their own attorneys' fees and costs of suit incurred in connection with the Action.

6. Mutual Release. Except as provided in this Agreement, including Paragraph 7, the Parties and their respective present and former representatives, including, without

limitation, their respective agents, employees, servants, directors, officers, trustees, affiliates, subsidiary companies, parent companies, individual partners, attorneys, assigns, and successors, and each of them, hereby forever release, discharge, and acquit the other from any and all claims, demands, sums of money, actions, rights, causes of action, attorney's fees, costs, obligations or liabilities of any kind or nature, whatsoever, which each may have had, or claim to have had, or now have, or claim to have, or hereafter may have, or assert to have, against the other, arising out of the Action. The matters released herein shall hereafter be referred to as the "Claim" or "Claims."

7. Agreement relates only to the Interim Remedial Action selected in the 1987 NHOU ROD. Notwithstanding anything to the contrary herein, the Parties hereto recognize and acknowledge that the settlement and release embodied in this Agreement relates only to the Interim Remedial Action selected in the 1987 NHOU ROD, as well as Past Basin-Wide Response Costs (as those terms are defined in the Second Partial Consent Decree) and that additional remedial actions may be undertaken by the United States of America and the State to address the contamination at the NHOU Site and that such additional remedial actions may be the bases for Claims which are not hereby released or the subject of this Agreement.

8. Civil Code Section 1542 Waiver. Except as provided in this Agreement, including Paragraph 7, each Party acknowledges and agrees that said Party understands the meaning and effect of section 1542 of the California Civil Code which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Each Party hereby waives and relinquishes every right or benefit which it has or may have under Section 1542 to the full extent that the Party may lawfully waive such right or benefit pertaining to the subject matter of this Agreement. Each Party is aware that said Party may hereafter discover Claims or facts in addition to or different from those it knows or believes to

be true with respect to the matters released herein. Nevertheless, it is the intention of the Parties, subject to Paragraph 7, above, to fully, finally, and forever settle and release all such Claims which do now exist, may exist, or may hereafter exist between them. In furtherance of such intention, the Mutual Release given herein shall be and remain in effect as a full and complete Mutual Release of all such Claims, notwithstanding the discovery or existence of any additional or different Claims or facts relative thereto, whether known or unknown, suspected or unsuspected.

9. Assumption of Risk of Unknown Claims. Each Party hereby further agrees to assume the risk of any and all unknown, unanticipated, unsuspected, or misunderstood Claims that are released by this Mutual Release in favor of the other. Similarly, to the extent (if any) that such laws may be applicable, each of the Parties waives and releases any right or defense that said Party might otherwise have under any other law that might limit or restrict the effectiveness or scope of any of the waivers or releases under this Mutual Release. In entering into this Agreement, each Party assumes the risk of any misrepresentation, concealment or mistake concerning the Claims herein. If any Party should subsequently discover that any fact relied upon by it in entering into this Agreement was untrue, any fact was concealed from it, or that its understanding of the facts or the law was incorrect, no Party shall be entitled to any relief in connection therewith, including, without limiting the generality of the foregoing, any alleged right to claim to set aside or rescind this Agreement. This Agreement is intended to be and is final and binding among the Parties hereto, regardless of any Claims, misrepresentations, or promises made without the intention to perform, concealment of fact, mistake of fact or law, or of any other circumstance, concerning the Claims herein.

10. Indemnification. By-Pro will indemnify, defend and hold harmless Holchem, Benjamin, and Chase, and each of them, from any and all claims, liability, attorneys' fees, costs or expenses arising out of or relating to any litigation now existing or hereafter brought by By-Pro relating only to the Interim Remedial Action selected in the 1987 NHO ROD as well as Past Basin-Wide Response Costs (as those terms are defined in the Second Partial Consent Decree). The indemnification by By-Pro pursuant to this paragraph shall be limited to the amount of \$45,000.00.

11. Representations and Warranties of By-Pro. By-Pro represents and warrants as follows:

- A. The individual signing on behalf of By-Pro has authority and power to enter into this Agreement, as an officer of By-Pro, and all necessary corporate resolutions granting such authority or power have been obtained;
- B. The representative of By-Pro, signing below, has the authority and power to enter into this Agreement, and all necessary and corporate resolutions granting such authority or power have been obtained;
- C. By-Pro has not assigned or transferred to any person or entity (nor otherwise disposed of) any Claim that is within the scope of those that it has released or waived in this Agreement; and
- D. That this Agreement is binding upon any corporation or entity which is or may be a successor of By-Pro.

12. Representations and Warranties of Holchem. Holchem represents and warrants as follows:

- A. The individual signing on behalf of Holchem has authority and power to enter into this Agreement, as an officer of Holchem, and all necessary corporate resolutions granting such authority or power have been obtained;
- B. The representative of Holchem, signing below, has the authority and power to enter into this Agreement, and all necessary and corporate resolutions granting such authority or power have been obtained;
- C. Holchem has not assigned or transferred to any person or entity (nor otherwise disposed of) any Claim that is within the scope of those that it has released or waived in this Agreement; and

- D. That this Agreement is binding upon any corporation or entity which is or may be a successor of Holchem.

13. Representations and Warranties of Chase Chemical and Benjamin. Chase Chemical and Benjamin represent and warrant as follows:

- A. The individual signing on behalf of Chase Chemical has authority and power to enter into this Agreement, as an officer of Chase Chemical, and all necessary corporate resolutions granting such authority or power have been obtained;
- B. The representative of Chase Chemical, signing below, has the authority and power to enter into this Agreement, and all necessary and corporate resolutions granting such authority or power have been obtained;
- C. Chase Chemical and Benjamin have not assigned or transferred to any person or entity (nor otherwise disposed of) any Claim that is within the scope of those that the Parties have released or waived in this Agreement; and
- D. That this Agreement is binding upon any corporation or entity which is or may be a successor of Chase Chemical, or Benjamin.

14. Compromise. This Agreement is being entered into and consideration is being paid in compromise of disputed Claims. Therefore, the entering into of this Agreement, the payment or giving of any consideration, or anything else provided for by other provisions of this Agreement, shall not be construed as an admission of any liability by any Party, whatsoever.

15. Counterparts. This Agreement may be executed in multiple counterparts, each of which will be an original but all of which together will constitute one and the same instrument.

16. Survival of Warranties. All representations, warranties, covenants and agreements of the Parties contained in this Agreement shall survive the delivery of this Agreement.

17. Use of Independent Counsel. Each of the Parties acknowledge that:

- A. They have been advised by their attorney(s) with respect to their rights and obligations in connection with this Agreement;
- B. In particular, that the effect and import of the Mutual Release have been fully explained to each of them by their own counsel; and
- C. They are not relying upon statements made by any other Party or counsel in entering into this Agreement.

18. Terminology. Whenever the context requires, the singular shall include the plural, and the masculine, the neuter, and the feminine. "Include" means "include, without limitation," and "including" means "including, without limitation." "And" is conjunctive and means all of the possibilities listed; "or" is disjunctive and means either one, or the other, or any combination of the alternatives listed. "Person" means any natural individual, or corporation, partnership, firm, association, organization or other enterprise.

19. Contractual Terms. Each term of this Agreement is contractual and not merely a recital.

20. Attorneys' Fees. If any Party prevails in any legal action or proceeding against another Party to enforce, defend or construe its rights or obligations under any provision of this Agreement or any part of this Agreement, then the prevailing Party shall recover from the other Party to the action or proceeding all reasonable legal expenses and costs (including reasonable attorneys' fees) that the prevailing Party may incur in connection with the action or proceeding, and on any appeal.

21. Binding Effect. This Agreement will be binding upon and shall inure to the

benefit of each Party and their respective trustees, shareholders, officers, directors, successors, heirs and assigns.

22. Expenses. Each Party will bear its own expenses (including attorneys' fees) incurred in connection with the drafting of this Agreement.

23. Further Agreements. The Parties shall execute such documents and do such other acts and deeds as may be required by another Party to further evidence or effectuate the requesting Party's rights under this Agreement.

24. Time is of the Essence. With reference to the rights, obligations and duties herein referred to, time is expressly herein stipulated to be of the essence.

25. Cooperation by Each Party. Each Party agrees that he, she or it will cooperate fully in executing any additional and further documents necessary to give effect to this Agreement. Each Party will bear their own attorneys fees and costs arising in connection with the events described above.

26. Entire Agreement. This Agreement contains the entire agreement between the Parties. Each Party represents that they have not relied on any inducement, promises or representations made by the other Party that are not contained within this Agreement. This Agreement may not be altered, amended, modified, or otherwise changed in any respect except by a writing, duly executed by the Parties herein, or their authorized representatives. All oral or written prior or contemporaneous agreements by the Parties concerning the matters set forth herein have been integrated into this Agreement.

27. Interpretation by State of California. This Agreement is entered into and is to be interpreted according to the laws of the State of California.

28. Drafting Responsibility. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party.

29. Terms of Agreement Are Binding. The Parties agree that the terms of this Agreement bind the Parties to this Agreement, their heirs, executors, administrators, successors, and assigns.

30. Severability If any part or provision of this Agreement should be determined by a court of competent jurisdiction to be invalid or unenforceable, this shall not affect any other part or provision of this Agreement.

31. Caption Headings. The caption headings used throughout this Agreement are for convenience only, and shall not be construed as affecting the interpretation or meaning of this Agreement.

Dated: July 3, 1996

Los Angeles By-Products Co.
a California corporation

By: 

M. R. McAllister, President
[print name and title]

Dated: _____, 1996

Holchem Inc., a California
corporation

By: _____

[print name and title]

Dated: _____, 1996

Chase Chemical Co. Inc.
a California corporation

By: _____

[print name and title]

29. Terms of Agreement Are Binding. The Parties agree that the terms of this Agreement bind the Parties to this Agreement, their heirs, executors, administrators, successors, and assigns.

30. Severability. If any part or provision of this Agreement should be determined by a court of competent jurisdiction to be invalid or unenforceable, this shall not affect any other part or provision of this Agreement.

31. Caption Headings. The caption headings used throughout this Agreement are for convenience, only, and shall not be construed as affecting the interpretation or meaning of this Agreement.

Dated: _____, 1996

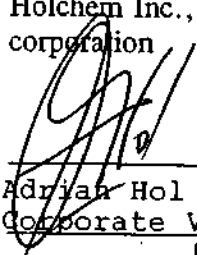
Los Angeles By-Products Co.
a California corporation

By: _____

[print name and title]

Dated: _____, 1996

Holchem Inc., a California
corporation

By:  _____
Adrian Hol
Corporate Vice President
[print name and title]

Dated: _____, 1996

Chase Chemical Co. Inc.
a California corporation

By: _____

[print name and title]

Dated _____, 1996

Herman Benjamin

[Signatures continued on next page.]

Dated _____, 1996

The Benjamin Family Trust dated October 13, 1987

By:

Herman Benjamin, Co-Trustee

Dated _____, 1996

By:

Isabel Benjamin, Co-Trustee

APPROVED AS TO FORM:

GREENWALD, HOFFMAN & MEYER

RUTAN & TUCKER, L.L.P.

By:

Raul M. Montes

By:

Raul M. Montes, Attorneys for
Los Angeles By-Products, Inc.,
a California corporation

Richard Montevideo, Attorneys for
Holchem, Inc., a California
corporation

GOLDFARB, STURMAN & AVERBACH

By:

Steven L. Feldman, Attorneys for
Herman Benjamin and Isabel Benjamin,
individually and as Trustees of the
Benjamin Family Trust Dated 10/13/87
and Chase Chemical Co., Inc.,
a Dissolved California corporation

Dated: _____, 1996

Herman Benjamin

[Signatures continued on next page.]

Dated: _____, 1996

The Benjamin Family Trust dated October 13, 1987

By: _____

Herman Benjamin, Co-Trustee

Dated: _____, 1996

By: _____

Isabel Benjamin, Co-Trustee

APPROVED AS TO FORM:

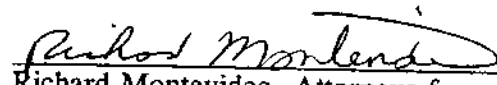
GREENWALD, HOFFMAN & MEYER

RUTAN & TUCKER, L.L.P.

By: _____

Raul M. Montes, Attorneys for
Los Angeles By-Products, Inc.,
a California corporation

By: _____


Richard Montevideo, Attorneys for
Holchem, Inc., a California
corporation

GOLDFARB, STURMAN & AVERBACH

By: _____

Steven L. Feldman, Attorneys for
Herman Benjamin and Isabel Benjamin,
individually and as Trustees of the
Benjamin Family Trust Dated 10/13/87
and Chase Chemical Co., Inc.,
a Dissolved California corporation

**EXHIBIT “A”
TO EXHIBIT “4”**

1 LOIS J. SCHIFFER
2 Assistant Attorney General
3 Environment & Natural Resources Division
4 United States Department of Justice

5 DAVID B. GLAZER
6 Environmental Enforcement Section
7 Environment & Natural Resources Division
8 United States Department of Justice
9 301 Howard Street, Suite 870
10 San Francisco, California 94105
11 Telephone: (415) 744-6491

12 NORA M. MANELLA
13 United States Attorney
14 LEON W. WEIDMAN
15 Assistant United States Attorney
16 Chief, Civil Division

17 KURT ZIMMERMAN
18 Assistant United States Attorney
19 Federal Building, Room 7516
20 300 North Los Angeles Street
21 Los Angeles, California 90012
22 Telephone: (213) 894-5709

23 Attorneys for Plaintiff, United States of America
24 (Attorneys for Plaintiffs continued on next page)

25
26 IN THE UNITED STATES DISTRICT COURT
27 FOR THE CENTRAL DISTRICT OF CALIFORNIA

28 UNITED STATES OF AMERICA)

Plaintiff,)

v.)

ALLIED-SIGNAL, INC., et al.,)

Defendants.)

STATE OF CALIFORNIA)

Plaintiff,)

v.)

ALLIED-SIGNAL, INC., et al.,)

Defendants.)

CIVIL NO. 93-6490-MRP

SECOND

PARTIAL CONSENT DECREE

SECOND

PARTIAL CONSENT DECREE

1 NANCY J. MARVEL

2 Regional Counsel

3 MARIE M. RONGONE

4 Assistant Regional Counsel

5 United States Environmental

6 Protection Agency, Region IX

7 75 Hawthorne Street

8 San Francisco, California 94105

9 Telephone: (415) 744-1313

10 Attorneys for Plaintiff, United States of America

11 DANIEL E. LUNGREN

12 Attorney General

13 THEODORA BERGER

14 Senior Assistant Attorney General

15 DONALD A. ROBINSON

16 ANN RUSHTON

17 Deputy Attorneys General

18 California Department of Justice

19 300 South Spring Street, #500

20 Los Angeles, California 90013

21 Telephone: (213) 897-2608

22 Attorneys for Plaintiff, State of California

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I. BACKGROUND

A. COMPLAINTS. On October 26, 1993, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and, on October 29, 1993, the State of California ("State"), on behalf of the State Department of Toxic Substances Control (formerly, the Toxic Substances Control Program of the State Department of Health Services), filed complaints in this matter pursuant to Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §§ 9607 and 9613. Both the United States and the State ("Plaintiffs") filed, prior to the lodging of this Consent Decree, amended complaints, which add additional defendants to the original complaints. In the amended complaints, the Plaintiffs seek recovery of response costs incurred by the Plaintiffs in connection with actions taken pursuant to CERCLA in response to releases and threatened releases of hazardous substances from the Defendants' facilities in the San Fernando Valley Groundwater Basin ("Basin") and at the North Hollywood Operable Unit Site ("NHOU Site") within the Basin.

B. SITE DESCRIPTION.

1. Basin. The San Fernando Valley Superfund Sites ("SFV Sites") are located in the eastern half of the Basin, between the San Gabriel and the Santa Monica Mountains, in Los Angeles County, California. EPA has divided the SFV Sites in two different ways. For the purpose of placing the SFV Sites on the National Priorities List ("NPL"), EPA divided the SFV Sites into the following four areas based on the location of drinking water

1 well fields that were known to be contaminated by volatile
2 organic compounds ("VOCs") in 1984: Area 1 (North Hollywood
3 Area), Area 2 (Crystal Springs Area), Area 3 (Verdugo Basin), and
4 Area 4 (Pollock Area). Once more was known about the extent of
5 groundwater contamination and for the purpose of accelerating the
6 investigation and cleanup of the SFV Sites, EPA divided the SFV
7 Sites into the following five Operable Units ("OUs"): North
8 Hollywood (the NHOU Site), Burbank, Glendale North, Glendale
9 South, and Pollock.

10 2. NHOU Site. This Consent Decree focuses on the
11 NHOU Site, originally listed as part of the San Fernando Valley
12 Area 1/North Hollywood Area NPL site. The NHOU Site is comprised
13 of the areal extent of hazardous substance groundwater
14 contamination that is presently located in the vicinity of the
15 North Hollywood Well Field and includes any areas to which and
16 from which such hazardous substance groundwater contamination
17 migrates.

18 C. NATURE OF SITE CONTAMINATION. Tests conducted in the
19 early 1980s to determine the presence of certain industrial
20 chemicals in the State's drinking water revealed extensive VOC
21 contamination in the Basin's groundwater. The primary
22 contaminants of concern were and are the solvents trichloroethene
23 ("TCE") and tetrachloroethene ("PCE"), widely used in a variety
24 of industries including metal plating, machinery degreasing, and
25 dry cleaning. By August 1985, groundwater from 27 of the 35
26 production wells in the North Hollywood Well Field alone exceeded
27 the Federal Maximum Contaminant Level ("MCL") for TCE. MCLs are
28 drinking water standards established under the Safe Drinking

Water Act of 1974, as amended, 42 U.S.C. § 300f et seq. Other VOC contaminants in the Basin have also been detected above their MCLs. As a result of this groundwater contamination, many production wells have been taken out of service, despite the fact that the Basin's groundwater has been used to supply the domestic water needs of approximately 800,000 people. According to recent estimates, the plumes of TCE contamination above the MCL in the Basin's groundwater extend over an area eleven miles long and as great as three miles wide.

D. NPL LISTING. In June 1986, EPA placed the SFV Sites, which include the NHOU Site, on the NPL (see 51 Federal Register 21054). The NPL is promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and is a list of the most seriously contaminated hazardous substances sites in the country (see 40 C.F.R. Part 300, Appendix B). As stated in Section I.B.1 above, the SFV Sites listed on the NPL are Area 1 (North Hollywood Area), Area 2 (Crystal Springs Area), Area 3 (Verdugo Basin), and Area 4 (Pollock Area). The original boundaries of the SFV Sites were based on the location of the drinking water well fields that were known to be contaminated by VOCs in 1984. Groundwater data collected since 1984 show that VOC groundwater contamination extends beyond the original boundaries drawn at the time the SFV Sites were placed on the NPL.

E. OU DESIGNATION. In 1985, EPA determined that the most effective way of dealing with the spreading groundwater contamination in the Basin was to divide the SFV Sites into OUs. Each OU represents a discrete, interim remedial action that will inhibit the migration of contamination in the groundwater prior

to the completion of a Basin-wide Remedial Investigation ("RI") and Feasibility Study ("FS") and selection of any Basin-wide remedial actions. As stated in Section I.B.1 above, EPA has identified the following five OUs: North Hollywood (the NHOU Site), Burbank, Glendale North, Glendale South, and Pollock. EPA has issued Record of Decision ("ROD") documents selecting interim remedial actions for four of these OUs: NHOU Site (1987), Burbank OU (1989), and Glendale North and South OUs (1993).

F. NHOU SITE FS AND ROD. In November 1986, pursuant to a cooperative agreement with EPA and the State of California, the Los Angeles Department of Water and Power ("LADWP") completed an OU FS for the NHOU Site. After providing an opportunity for the public to comment on the completed OU FS, in September 1987, EPA issued a ROD for the NHOU Site. The interim remedial action selected in the 1987 NHOU ROD is fifteen years of groundwater extraction and treatment.

G. NHOU SITE INTERIM REMEDIAL ACTION. In 1989, pursuant to another cooperative agreement with EPA and the State of California, LADWP constructed the NHOU Site groundwater extraction and treatment facilities. These facilities pump out contaminated groundwater, remove the contaminants from the groundwater, and convey the treated groundwater to LADWP's pump station for distribution to the public. Consistent with Section 104(c)(3) of CERCLA, 42 U.S.C. § 9604(c)(3), EPA paid for ninety percent and the State paid for ten percent of the construction costs of the extraction and treatment facilities; and EPA is paying for ninety percent and the State is responsible for paying ten percent of the operating costs of the NHOU Site interim

remedial action. Pursuant to its cooperative agreement with EPA and the State of California, LADWP will continue to operate and maintain the NHOU Site Interim Remedial Action.

H. BASIN-WIDE GROUNDWATER AND SOIL CLEANUP ACTIVITIES.

Remediation of groundwater in the Basin is a collaborative undertaking of EPA, the State, LADWP, and the California Regional Water Quality Control Board, Los Angeles Region ("RWQCB"). In December 1992, pursuant to another cooperative agreement with EPA, LADWP completed the Phase 1 Basin-wide groundwater RI. EPA has begun preparing a Basin-wide groundwater FS. In addition to groundwater investigation and remediation activities, EPA, in conjunction with the State and RWQCB, has conducted and continues to conduct soil investigations at individual facilities throughout the Basin to uncover potential sources of groundwater contamination. In September 1989, EPA entered into a cooperative agreement with RWQCB to provide funds to augment the State's program to investigate sources of groundwater contamination in the Basin.

I. PLAINTIFFS' ALLEGATION OF DEFENDANTS' LIABILITY. The

Plaintiffs allege that: (i) the past, present, or potential migrations of "hazardous substances," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), from the Defendants' "facilities," as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), constitute actual or threatened "releases," as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22); (ii) the Defendants are persons subject to liability under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a); (iii) the releases or threatened releases of hazardous substances from the Defendants' facilities

1 have caused the Plaintiffs to incur and to continue to incur
2 "response" costs, within the meaning of Section 101(25) of
3 CERCLA, 42 U.S.C. § 9601(25); and (iv) the actions taken by the
4 Plaintiffs in response to releases or threatened releases of
5 hazardous substances from the Defendants' facilities were not
6 inconsistent with the National Contingency Plan.

7 J. SETTLING DEFENDANTS' DENIAL OF LIABILITY. The
8 Defendants that have entered into this Consent Decree ("Settling
9 Defendants") do not admit and expressly deny any liability to the
10 Plaintiffs arising out of the transactions or occurrences alleged
11 in the amended complaints or as set forth above. The Plaintiffs
12 and the Settling Defendants agree that neither this Consent
13 Decree, nor the entry into settlement, nor any payments pursuant
14 to this Consent Decree shall constitute or be construed as a
15 finding or an admission, adjudication or acknowledgement of any
16 fact or law, or of any liability, fault or wrongdoing, or
17 evidence of such, or an admission of violation of any law, rule
18 or regulation by Settling Defendants nor as an estoppel or waiver
19 of any defenses of Settling Defendants except as provided in
20 Section VI.G of this Consent Decree.

21 K. PURPOSE.

22 1. Pursuant to a cooperative agreement with EPA and
23 the State of California, LADWP is implementing the NHOU Site
24 Interim Remedial Action selected in the 1987 NHOU ROD. The
25 purpose of this Consent Decree is to avoid prolonged litigation
26 and to provide for the Settling Defendants' payment of specified
27 amounts of the past and future response costs for the NHOU Site
28 Interim Remedial Action selected in the 1987 NHOU ROD and of the

1 past costs of Basin-wide investigations relating to their
2 facilities located at the NHOU Site in full and complete
3 satisfaction of any and all claims against Settling Defendants
4 for such costs.

5 2. The parties to this Consent Decree ("Parties")
6 recognize that the Settling Defendants' payment represents only a
7 part of the total cost of the NHOU Site Interim Remedial Action
8 selected in the 1987 NHOU ROD and of the past costs of Basin-wide
9 investigations relating to the facilities located at the NHOU
10 Site.

11 3. In entering into this Consent Decree, the
12 Plaintiffs have considered the circumstances of the releases and
13 threatened releases of hazardous substances in the Basin, the
14 involvement of the Settling Defendants in the ownership and/or
15 operation of facilities located at the NHOU Site and the
16 willingness and capacity of Settling Defendants and the other
17 Defendants to resolve this matter.

18 4. The Parties agree, and the Court by entering this
19 Consent Decree finds, that this Consent Decree has been
20 negotiated by the Parties in good faith and implementation of
21 this Consent Decree will expedite the cleanup of the NHOU Site
22 and will avoid prolonged and complicated litigation between the
23 Parties, and that this Consent Decree is fair, reasonable, and in
24 the public interest.

1 THEREFORE, with the consent of the parties to this Consent
2 Decree, it is ORDERED, ADJUDGED, AND DECREED:

3 II. DEFINITIONS

4 Unless otherwise expressly provided herein, terms used in
5 this Consent Decree that are defined in CERCLA or in regulations
6 promulgated under CERCLA shall have the meaning assigned to them
7 in CERCLA or in such regulations. Whenever terms listed below
8 are used in this Consent Decree or in any appendices attached
9 hereto and incorporated hereunder, the following definitions
10 shall apply:

11 A. "Basin-wide Response Costs" shall mean all costs that
12 the Plaintiffs have incurred or may incur for Basin-wide/non-
13 operable unit specific investigations or other non-operable unit
14 specific response actions.

15 B. "CERCLA" shall mean the Comprehensive Environmental
16 Response, Compensation, and Liability Act of 1980, as amended, 42
17 U.S.C. §§ 9601 et seq.

18 C. "Certification of Completion" shall mean EPA's
19 certification pursuant to Section 122(f)(3) of CERCLA, 42 U.S.C.
20 § 9622(f)(3), that all remedial actions have been completed that
21 relate to the NHOU Site in accordance with the requirements of
22 the National Contingency Plan and any applicable Record of
23 Decision.

24 D. "Consent Decree" or "Second Partial Consent Decree"
25 shall mean this Decree and any attached appendices. In the event
26 of conflict between this Decree and any appendix, this Decree
27 shall control. "First Consent Decree" shall mean the Partial
28 Consent Decree in this action lodged with this Court on March 14,

1 1996 and entered by this Court on _____, 1996.

2 E. "Day" shall mean a calendar day. In computing any
3 period of time under this Consent Decree, where the last day
4 would fall on a Saturday, Sunday, or Federal Holiday, the period
5 shall run until the close of business of the next working day.

6 F. "EPA" shall mean the United States Environmental
7 Protection Agency and any successor departments or agencies of
8 the United States.

9 G. "Future Basin-wide Response Costs" shall mean all
10 Basin-wide response costs that EPA has incurred or will incur
11 after April 30, 1992 and that the State has incurred or will
12 incur after December 31, 1993.

13 H. "Interest," in accordance with Section 107(a) of
14 CERCLA, 42 U.S.C. § 9607(a), shall mean interest at the rate
15 specified for interest on investments of the Hazardous Substance
16 Superfund established pursuant to the Internal Revenue Code, 26
17 U.S.C. § 9507. In calculating interest, Plaintiffs may compound
18 on a monthly or annual basis.

19 I. "Interim Remedial Action" shall mean the interim
20 remedial action selected in the 1987 NHOU ROD.

21 J. "North Hollywood Operable Unit" or "NHOU Site" shall
22 mean the areal extent of hazardous substance groundwater
23 contamination that is presently located in the vicinity of the
24 North Hollywood Well Field and includes any areas to which and
25 from which such hazardous substance groundwater contamination
26 migrates. EPA has determined that each of the Settling
27 Defendants named in its amended complaints has owned and/or
28 operated and/or currently owns and/or operates facilities that

are located at the NHOU Site and/or has arranged for the disposal of hazardous substances at a facility located at the NHOU Site.

K. "Parties" shall mean the United States, the State of California, and the Settling Defendants.

L. "Past Basin-wide Response Costs" shall mean Basin-wide Response Costs incurred by EPA prior to and including April 30, 1992 and Basin-wide Response Costs incurred by the State prior to and including December 31, 1993.

M. "Plaintiffs" shall mean the United States and the State of California.

N. "Releasees" shall mean Settling Defendants and their officers, directors, employees and agents, and where the Settling Defendant is a trustee, its successor trustees appointed to carry out the purposes of said trust; and where the Settling Defendant is a corporate entity, its corporate successors to potential liability for the NHOU Site. "Releasees" shall also mean the following named entities associated with one or more of the Settling Defendants:

Affiliates of: [to be added if any Settling Defendant so requests and the United States and the State approve. Affiliates may include predecessor corporate entities or a/k/a entities. Affiliates may not include shareholders or parent corporations. The latter entities must execute the consent decree on their own behalf].

However, Releasees shall not include any person or entity with liability for the NHOU Site independent of that person's or entity's association with a Settling Defendant.

O. "Settling Defendants" shall mean defendants

1 AlliedSignal, Inc., Hawker-Pacific, Inc., Gordon and Peggy
2 Wagner, Joseph Basinger, California Car Hikers Service, Inc., and
3 Los Angeles By-Products, Inc. "Settling Defendants" shall also
4 include third party defendants Parker-Hannifin Corporation,
5 Inchcape, Inc., Crown Disposal Company, Inc., Western Waste
6 Industries, Browning-Ferris Industries of California, Inc., E.I.
7 DuPont De Nemours, HR Textron, Inc., AVX Filters Corporation,
8 Price Pfister, Inc., Nupla Corporation, Chase Chemical Company,
9 Inc., Holchem, Inc., Herman and Isabel Benjamin, and the Benjamin
10 Family Trust.

11 P. "State" shall mean the State of California.

12 Q. "United States" shall mean the United States of
13 America.

14 R. "1987 NHOV ROD" shall mean the EPA Record of Decision
15 relating to the North Hollywood Operable Unit of the San Fernando
16 Valley Area 1/North Hollywood Area National Priorities List site
17 that was signed in September 1987 by the EPA Region IX Deputy
18 Regional Administrator, acting for the Regional Administrator,
19 and all attachments thereto.

20 S. "1987 NHOV ROD Response Costs" shall mean all past and
21 future costs that the Plaintiffs or any other person have
22 incurred or will incur for implementation of the remedy selected
23 in the 1987 NHOV ROD.

24 III. JURISDICTION

25 This Court has jurisdiction over the subject matter of this
26 action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C.
27 §§ 9606, 9607, and 9613(b). This Court also has personal
28 jurisdiction over the Settling Defendants. Solely for the

1 purposes of this Consent Decree, the Settling Defendants waive
2 all objections and defenses that they may have to jurisdiction of
3 this Court or to venue in this District and shall not challenge
4 the entry of this Consent Decree or this Court's jurisdiction to
5 enter and enforce this Consent Decree.

6 IV. PARTIES BOUND

7 This Consent Decree is binding upon the Plaintiffs, and upon
8 the Settling Defendants and their heirs, successors, and assigns.
9 Any change in ownership or corporate or other legal status,
10 including but not limited to any transfer of assets or real or
11 personal property, shall in no way alter the status or
12 responsibilities of the Settling Defendants under this Consent
13 Decree.

14 V. REIMBURSEMENT OF RESPONSE COSTS AND RELATED OBLIGATIONS

15 A. PAYMENT OF RESPONSE COSTS. Except as otherwise
16 provided in Paragraph V.F, within thirty (30) days of entry of
17 this Consent Decree, each Settling Defendant shall pay the
18 settlement amount it is obligated to pay pursuant to Paragraph
19 V.F below to the United States and to the State for 1987 NHOU ROD
20 Response Costs and Past Basin-wide Response Costs.

21 B. FORM OF PAYMENT. Payment to the United States by each
22 Settling Defendant shall be made in accordance with instructions
23 provided by Plaintiff United States to the Settling Defendants
24 upon execution of the Consent Decree. Of the total amount to be
25 paid to EPA pursuant to this Consent Decree, \$ 2,961,540 shall be
26 deposited in the EPA Hazardous Substance Superfund as
27 reimbursement for past response costs incurred at or in
28 connection with the Site as of the Effective Date of this Consent

1 Decree, and \$ 1,850,960 ("the Remainder") and any Interest
2 payments shall be deposited in the NHOU Special Account to be
3 retained and used to conduct or finance the response action at or
4 in connection with the Site. Any balance remaining in the NHOU
5 Special Account after completion of the response at or in
6 connection with the Site shall be deposited in the EPA Hazardous
7 Substance Superfund. Payment to the State shall be made in the
8 form of a certified check or cashier's check made payable to
9 "Cashier, Department of Toxic Substances Control," and shall be
10 forwarded to:

11 Department of Toxic Substances Control
12 State of California
13 Accounting Office
400 P Street, 4th Floor
Sacramento, California 95814

14 Each Settling Defendant shall send a transmittal letter with the
15 check referencing the North Hollywood Operable Unit/San Fernando
16 Valley Area 1 Site, Project Nos. 300126 and 300287. Each
17 Settling Defendant shall also send a copy of its check and
18 transmittal letter to the State as specified in Section XI.

19 C. FAILURE TO MAKE TIMELY PAYMENTS

20 1. Interest on Late Payments. In the event that any
21 payments required under Section V are not made when due, Interest
22 on the unpaid amount shall begin to accrue thirty (30) days after
23 the effective date of this Consent Decree, at the rate specified
24 in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), through the
25 date of payment.

26 2. Stipulated Penalties. If any amounts due to the
27 Plaintiffs under this Consent Decree are not paid by the required
28 date, the delinquent Settling Defendant shall pay as a stipulated

1 penalty, in addition to the interest required by Section V.C.1
2 above, \$1000 for the first 30 days and \$5,000 thereafter per day
3 that such payment is late. Stipulated penalties are due and
4 payable within thirty (30) days of the delinquent Settling
5 Defendant's receipt from either Plaintiff of a demand for payment
6 of the penalties. All payments of stipulated penalties to the
7 United States shall be made in the form of a certified check or
8 cashier's check made payable to "EPA Hazardous Substance
9 Superfund," and shall be forwarded to:

10 U.S. Environmental Protection Agency, Region IX
11 Superfund Accounting
12 P.O. Box 360863M
Pittsburgh, Pennsylvania 15251
Attention: Collection Officer for Superfund

13 The delinquent Settling Defendant shall send a transmittal letter
14 with the check referencing the North Hollywood Operable Unit/San
15 Fernando Valley Area 1 Site and the civil action number 93-6490-
16 MRP(Tx), and shall also state that the funds are to be applied to
17 site spill identifier numbers N1 and 59. The delinquent Settling
18 Defendant shall also send copies of the check and transmittal
19 letter to the United States as specified in Section XI. All
20 payments of stipulated penalties to the State shall be made in
21 the form and manner specified in Section V.B above. Penalties
22 shall accrue as provided above regardless of whether Plaintiffs
23 have notified the delinquent Settling Defendant of the violation
24 or made a demand for payment, but need only be paid upon demand.
25 However, payment shall be considered timely with respect to each
26 Settling Defendant so long as the Settling Defendant has given
27 timely instructions to a competent financial institution for the
28 subject Electronic Funds Transfer ("EFT") to be made in a timely

manner, and has promptly upon the transfer obtained a written verification from the financial institution that the EFT was made in accordance with the Settling Defendant's instructions.

D. COLLECTION ACTIONS. If either Plaintiff must bring an action to collect any payment required by this Consent Decree, the delinquent Settling Defendant shall reimburse the Plaintiff bringing the action for all costs of such action, including but not limited to costs of attorney time.

E. RELATION TO OTHER REMEDIES. Payments made under Section V shall be in addition to any other remedies or sanctions available to the Plaintiffs by virtue of a delinquent Settling Defendant's failure to make timely payments required by this Consent Decree.

F. PAYMENT SCHEDULE. The Settling Defendants shall pay the United States and the State the following sums, when and in the manner described in paragraphs V.A and B, above.

	<u>United States</u>	<u>State of California</u>
AlliedSignal, Inc.	\$ 2,990,000	\$ 156,000
Hawker-Pacific, Inc.	\$ 382,500	\$ 40,950
Parker-Hannifin Corporation	\$ 150,000	
Inchcape, Inc.	\$ 150,000	
Gordon and Peggy Wagner, and Joseph Basinger	\$ 150,000	\$ 9,000
California Car Hikers Service	\$ 300,000	\$ 18,000
Los Angeles Byproducts, Inc.	\$ 526,020	\$ 32,680
Crown Disposal Company, Inc.	\$ 33,280	\$ 1,920
Western Waste Industries	\$ 15,600	\$ 900
Browning-Ferris Industries	\$ 15,600	\$ 900
E.I. DuPont De Nemours	\$ 15,600	\$ 900

1	HR Textron, Inc.	\$	10,400	\$	600
2	AVX Filters Corporation	\$	10,400	\$	600
3	Price Pfister, Inc.	\$	5,200	\$	300
4	Nupla Corporation	\$	15,600	\$	900
5					
6	Herman and Isabel Benjamin	\$	42,300	\$	2,700
7	The Benjamin Family Trust				

8 In lieu of the lump sum settlement payment specified in
9 Paragraph F above, AlliedSignal, Inc. may make payments as
10 follows:

11 AlliedSignal, Inc. shall pay \$ 1,000,000 to the United
12 States and \$ 64,000 to the State when and in the manner described
13 in Paragraphs V.A. and B above in accordance with instructions
14 provided by Plaintiff United States to the Settling Defendants
15 upon execution of the Consent Decree. AlliedSignal, Inc. shall
16 pay the balance of the amount described in Paragraph V.F above as
17 follows: On or before the first anniversary of the entry of this
18 Consent Decree, AlliedSignal, Inc. shall pay \$ 1,000,000 plus
19 \$ 89,700 in interest to the United States and \$ 46,000 plus
20 \$ 4,140 in interest to the State; and, on or before the second
21 anniversary of the Effective Date of this Consent Decree,
22 AlliedSignal, Inc. shall pay the remaining \$ 990,000 to the
23 United States and the remaining \$ 46,000 to the State.

24 G. ADDITIONAL OBLIGATIONS OF ALLIEDSIGNAL, INC.

25 In addition to reimbursing the United States and the State
26 for response costs as set forth in this Section, AlliedSignal,
27 Inc. shall complete the work described in the Addendum to
28 Remedial Action Plan for Shallow Soils Impacted by Volatile
Organic Compounds (Hydrologue, August 1, 1994). AlliedSignal,

1 Inc. shall complete such work under the primary direction and
2 oversight of the Los Angeles Regional Water Quality Control
3 Board, and under the general oversight of the United States
4 pursuant to its cooperative agreements with the State Water
5 Resources Control Board for RWQCB investigations. Such work is
6 anticipated to cause AlliedSignal, Inc. to incur costs in the
7 approximate amount of \$ 500,000; however, AlliedSignal, Inc.
8 shall complete such work notwithstanding whether its costs to
9 perform the work are greater or less than \$ 500,000.

10 VI. COVENANTS NOT TO SUE AND RESERVATIONS OF RIGHTS

11 A. PLAINTIFFS' COVENANT NOT TO SUE. In consideration of
12 the settlement payments that will be made by Settling Defendants
13 under the terms of the Consent Decree, and except as specifically
14 provided in Sections VI.B, VI.C, VI.E, and VI.F, the Plaintiffs
15 covenant not to sue or to take administrative action against
16 Settling Defendants and such additional Releasees as are defined
17 in Section II, pursuant to Sections 106 and 107(a) of CERCLA and
18 Section 7003 of the Resource Conservation and Recovery Act and
19 comparable state law, including but not limited to the California
20 Hazardous Substance Account Act, Health and Safety Code Section
21 25300, et seq., and/or common law with regard to all 1987 NHOU
22 ROD Response Costs and all Past Basin-wide Response Costs.

23 1. The covenant not to sue shall take effect as to
24 each Settling Defendant and such additional Releasees as are
25 defined in Section II upon the receipt by Plaintiffs of the
26 payments of that Settling Defendant required by Section V, except
27 as follows:

28 a. As to AlliedSignal, Inc., the covenant not to

1 sue shall take effect upon the receipt by the Plaintiffs of the
2 initial payments required by Section V of AlliedSignal, Inc.

3 b. As to Los Angeles Byproducts, Inc., the
4 covenant not to sue shall take effect upon payment of the total
5 of the amounts due from Los Angeles Byproducts, Inc. and the
6 following third party defendants: Crown Disposal Company, Inc.,
7 Western Waste Industries, Browning-Ferris Industries of
8 California, Inc., E.I. DuPont De Nemours, HR Textron, Inc., AVX
9 Filters Corporation, Price Pfister, Inc., Nupla Corporation,
10 Herman and Isabel Benjamin, and^{or} the Benjamin Family Trust.

11 c. As to Hawker Pacific, Inc., the covenant not
12 to sue shall take effect upon payment of the total of the amounts
13 due from Hawker Pacific, Inc., Parker-Hannifin Corporation and
14 Inchcape, Inc.

15 d. As to Holchem, Inc. and Chase Chemical
16 Company, Inc., the covenant not to sue shall take effect upon
17 payment of the amounts due from Herman and Isabel Benjamin and/or
18 the Benjamin Family Trust.

19 2. The covenant not to sue as to each Settling
20 Defendant is conditioned upon the Settling Defendant making all
21 of the payments required of that Settling Defendant by this
22 Consent Decree, except as follows:

23 a. As to AlliedSignal, Inc., the covenant not to
24 sue is also conditioned upon completion of its obligations under
25 Sections V.G and V.H;

26 b. As to Holchem, Inc. and Chase Chemical
27 Company, Inc., the covenant not to sue is conditioned upon
28 plaintiffs' receipt of the payments required of Herman and Isabel

1 Benjamin and/or the Benjamin Family Trust.

2 3. The covenant not to sue extends only to the
3 Settling Defendants and the Releasees as defined in Section II,
4 and does not extend to any other person. In the event of any
5 breach by a Settling Defendant of its obligations under this
6 Consent Decree, the covenant not to sue shall remain in effect as
7 to the other Settling Defendants and Releasees despite said
8 breach, except as to Los Angeles Byproducts, Inc. and Hawker
9 Pacific, Inc. as described in this Section, VI.A.1.b and 1.c; and
10 except ^{also} as to Herman and Isabel Benjamin and the Benjamin Family
11 Trust, ^{between} as ~~to~~ whom the obligation to pay ^{\$45,000} is joint and several.

12 B. PLAINTIFFS' PRE-CERTIFICATION RESERVATIONS.

13 Notwithstanding any other provision of this Consent Decree, the
14 Plaintiffs reserve, and this Consent Decree is without prejudice
15 to, the right to institute proceedings in this action or in a new
16 action, or to issue an administrative order seeking to compel the
17 Settling Defendants (i) to perform further response actions
18 relating to the NHOU Site or (ii) to reimburse Plaintiffs for
19 costs of response related to such further response actions, if
20 prior to the Certification of Completion:

- 21 1. conditions at the NHOU Site, previously unknown to
22 the Plaintiffs, are discovered, or
23 2. information, previously unknown to the Plaintiffs,
24 is received, in whole or in part,
25 and these previously unknown conditions or information together
26 with any other relevant information indicates that any remedial
27 action taken at the NHOU Site is not protective of human health
28 or the environment. As of the date of entry of this Consent

Decree, EPA agrees that the interim remedial measures being implemented at the NHOU Site under the 1987 NHOU ROD are protective of human health and the environment.

C. PLAINTIFFS' POST-CERTIFICATION RESERVATIONS.

Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Settling Defendants (i) to perform further response actions relating to the NHOU Site or (ii) to reimburse the Plaintiffs for such costs of response if, subsequent to the Certification of Completion:

1. conditions at the NHOU Site, previously unknown to the Plaintiffs, are discovered, or
2. information, previously unknown to the Plaintiffs, is received, in whole or in part,

and these previously unknown conditions or this information together with other relevant information indicate that any remedial action taken at the NHOU Site is not protective of human health or the environment.

D. INFORMATION AND CONDITIONS KNOWN TO THE PLAINTIFFS.

For purposes of Section VI.B, the information and the conditions known to the Plaintiffs shall include only that information and those conditions set forth in the 1987 NHOU ROD, the administrative record supporting the 1987 NHOU ROD, the San Fernando Valley Phase I Groundwater RI, December 1992, and all documents submitted to EPA in response to CERCLA Section 104(e) inquiries or other EPA requests, including discovery requests in

1 the above-captioned action, prior to May 23, 1996. For purposes
2 of Section VI.C, the information and the conditions known to the
3 Plaintiffs shall include the information and conditions known to
4 the Plaintiffs for purposes of Section VI.B, and that information
5 and those conditions set forth in (i) any future Explanation(s)
6 of Significant Differences, ROD(s), or Amendment(s) to any ROD(s)
7 relating to the NHOU Site; (ii) the administrative record
8 supporting any future Explanations of Significant Differences,
9 ROD(s), or Amendments to any ROD(s) relating to the NHOU Site,
10 (iii) all documents submitted to EPA in response to CERCLA
11 Section 104(e) inquiries or other EPA requests, including
12 discovery requests in the above-captioned action, prior to
13 issuance of the Certification of Completion; and (iv) the record
14 for the NHOU Site maintained by EPA following issuance of any
15 ROD(s) but prior to issuance of the Certification of Completion.

16 E. PLAINTIFFS' GENERAL RESERVATION OF RIGHTS. The
17 covenant not to sue set forth above does not pertain to any
18 matters other than those expressly specified in Section VI.A.
19 The Plaintiffs reserve, and this Consent Decree is without
20 prejudice to, all rights against each Settling Defendant with
21 respect to all other matters, including, but not limited to, the
22 following:

- 23 1. claims based on a failure by that Settling Defend-
24 ant to meet a requirement of this Consent Decree;
- 25 2. liability arising from the past, present, or
26 future disposal, release, or threat of release of
27 hazardous substances outside of the NHOU Site;
- 28 3. liability for damages for injury to, destruction

1 of, or loss of natural resources;

2 4. liability for response costs to enforce CERCLA or
3 any other federal environmental law that have been
4 or may be incurred by any federal agencies other
5 than EPA or the Department of Justice on behalf of
6 EPA;

7 5. liability for response costs to enforce CERCLA or
8 any state environmental law that has been or may
9 be incurred by any state agencies other than DTSC
10 or the State Department of Justice on behalf of
11 DTSC; and

12 6. criminal liability.

13 F. PLAINTIFFS' NHOUS SITE-SPECIFIC RESERVATION OF RIGHTS.

14 The covenant not to sue set forth above specifically does not
15 pertain to the performance of any RI/FS other than the 1986 OU/FS
16 that formed the basis for the 1987 NHOUS ROD; additional response
17 actions that may be implemented pursuant to any final remedy or
18 pursuant to any future Explanation(s) of Significant Differences,
19 ROD(s), or Amendment(s) to any ROD(s); costs or activities
20 related to any OU other than the NHOUS Site, including any future
21 OU(s); or any unknown environmental condition as to which
22 Plaintiffs have reserved their rights in Paragraphs C and D
23 above.

24 Plaintiff State currently does not fund the costs of
25 operation and maintenance of the NHOUS Site remedy and is not
26 seeking to recover such costs in this action. Costs of
27 operations and maintenance are being funded by the United States
28 and LADWP pursuant to contractual agreement. However, in the

1 | event that the State subsequently incurs operations and
2 | maintenance costs due to a failure by either the United States or
3 | the LADWP to fund the operation and maintenance costs of the NHOU
4 | Site remedy, such costs are not to be considered "1987 NHOU ROD
5 | response costs" as defined in this Consent Decree and the State
6 | reserves the right to seek recovery of such operations and
7 | maintenance costs from any potentially responsible party,
8 | including each of the Settling Defendants.

9 | G. SETTLING DEFENDANTS' RESERVATION OF RIGHTS.

10 | Settling Defendants reserve any and all defenses or rights they
11 | may have with respect to any actions concerning the NHOU Site
12 | except any rights expressly waived in this Consent Decree.

13 | Settling Defendants retain any and all rights, claims, remedies
14 | and defenses that they have or may have against any person or
15 | entity not expressly waived in this Consent Decree, except for
16 | rights, claims and remedies any Settling Defendant has or may
17 | have against any other Settling Defendant(s) or Releasees for
18 | matters addressed in this Consent Decree, which are hereby
19 | expressly waived. This reservation shall not affect each
20 | Settling Defendant's obligation to perform its obligation under
21 | this Consent Decree, and shall not affect EPA's ability to assess
22 | stipulated penalties in accordance with Section V.C.2 (Stipulated
23 | Penalties).

24 | H. SETTLING DEFENDANTS' COVENANT. The Settling Defendants
25 | hereby covenant not to sue and agree not to assert any claims or
26 | causes of action against either Plaintiff with respect to 1987
27 | NHOU ROD Response Costs and Past Basin-wide Response Costs
28 | including, but not limited to, (i) any direct or indirect claim

1 for reimbursement from the Hazardous Substance Superfund
2 (established pursuant to the Internal Revenue Code, 26 U.S.C.
3 § 9507), under CERCLA §§106(b)(2), 107, 111, 112, or 113, or any
4 other provision of law; (ii) any claim against the United States
5 or the State, including any department, agency, or
6 instrumentality of the United States or State pursuant to
7 Sections 107 and 113 of CERCLA related to the 1987 NHOU ROD
8 Response Costs or the Past Basin-wide Response Costs; or (iii)
9 any claims arising out of response activities at the NHOU Site.
10 However, and notwithstanding the foregoing, nothing in this
11 Consent Decree shall be interpreted as waiving, abrogating, or
12 resolving (1) any claims which any Settling Defendant has or may
13 have based upon any alleged liability which the United States
14 Department of Defense, any branch or division thereof, or any
15 predecessor agency has or may have for conditions at the NHOU
16 Site pursuant to CERCLA Section 106, 107, 113, 120 or 310, 42
17 U.S.C. §§ 9606, 9607, 9613, 9620 or 9659, or RCRA Section 7002,
18 42 U.S.C. § 6972, or (2) any claims which any Settling Defendant
19 has or may have with respect to the 1987 NHOU ROD response costs
20 or Past Basin-wide Response Costs against the United States
21 pursuant to any contract between any Settling Defendant and the
22 United States or any government contractor(s). Nothing in this
23 Consent Decree shall be deemed to constitute preauthorization of
24 a claim within the meaning of Section 111 of CERCLA, 42 U.S.C.
25 § 9611, or 40 C.F.R. § 300.700(d).

26 VII. CONTRIBUTION PROTECTION

27 A. Except for the Releasees as defined in Section II,
28 nothing in this Consent Decree shall be construed to create any

1 rights in, or grant any cause of action to, any person not a
2 party to this Consent Decree. Each of the Parties expressly
3 reserves any and all rights (including, but not limited to, any
4 right to contribution), defenses, claims, demands, and causes of
5 action which each party may have with respect to any matter,
6 transaction, or occurrence relating in any way to the NHOU Site
7 against any person not a party hereto or a Releasee.

8 B. With regard to claims for contribution against the
9 Releasees for matters addressed in this Consent Decree, the
10 Parties hereto agree that the Releasees are entitled to the
11 protection from contribution actions or claims provided by
12 Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

13 C. "Matters addressed in this Consent Decree" mean 1987
14 NHOU ROD Response Costs and Past Basin-wide Response Costs and
15 shall include any claim for such costs that either Plaintiff has
16 or may have against any Releasee with respect to any facility
17 located within the NHOU Site.

18 D. The Settling Defendants agree that with respect to any
19 suit or claim for contribution brought by them for matters
20 addressed in this Consent Decree they will notify the Plaintiffs
21 in writing no later than sixty (60) days prior to the initiation
22 of such suit or claim. The Settling Defendants also agree that
23 with respect to any suit or claim for contribution brought
24 against them for matters addressed in this Consent Decree they
25 will notify in writing the Plaintiffs within sixty (60) days of
26 service of the complaint on them. In addition, the Settling
27 Defendants shall notify the Plaintiffs within ten (10) days of
28 service or receipt of any Motion for Summary Judgment for matters

1 addressed in this Consent Decree and within ten (10) days of
2 receipt of any order from a court setting a case for trial for
3 matters addressed in this Consent Decree.

4 E. The Parties recognize and acknowledge that the
5 settlement embodied in this Consent Decree relates only to the
6 Interim Remedial Action selected in the 1987 NHOU ROD, as well as
7 Past Basin-wide Response Costs, and that additional remedial
8 actions may be necessary to address the contamination at the NHOU
9 Site. In any subsequent administrative or judicial proceeding
10 initiated by the United States or the State and not precluded by
11 this Consent Decree for injunctive relief, recovery of response
12 costs, or other appropriate relief relating to the NHOU Site, the
13 Settling Defendants shall not assert, and may not maintain, any
14 defense or claim based upon the principles of waiver, res
15 judicata, collateral estoppel, issue preclusion, claim-splitting,
16 or other defenses based upon any contention that the claims
17 raised by the United States or the State in the subsequent
18 proceeding were or should have been brought in the instant case;
19 provided, however, that nothing in this Section VII.E affects
20 the enforceability of the covenants not to sue set forth in
21 Section VI.

22 VIII. NHOU SITE ACCESS

23 A. Commencing upon the date of entry of this Consent
24 Decree and terminating upon issuance of a final ROD for the NHOU
25 Site, the Settling Defendants who own property at the NHOU Site
26 agree to provide the Plaintiffs and their representatives access
27 at all reasonable times to their facilities located at the NHOU
28 Site and any other property owned or controlled by the Settling

1 Defendants to which access is required for the implementation of
2 response actions for the NHOU Site, including, but not limited
3 to, the following actions:

- 4 1. monitoring, investigation, remedial, or other
5 activities at the NHOU Site;
- 6 2. verifying any data or information submitted to
7 either Plaintiff;
- 8 3. conducting investigations relating to
9 contamination at or near the NHOU Site;
- 10 4. obtaining samples; and
- 11 5. assessing the need for, planning, or implementing
12 response actions at or near the NHOU Site.

13 To the extent Plaintiffs deem consistent with protection of
14 human health and the environment, Plaintiffs will provide the
15 Settling Defendant with twenty-four (24) hours' notice prior to
16 entry to properties accessed pursuant to this Consent Decree. In
17 accessing Settling Defendants' properties pursuant to this
18 Consent Decree, Plaintiffs shall not unreasonably interfere with
19 Settling Defendants' business activities. However, nothing in
20 this paragraph shall provide any Settling Defendant with any
21 claim or cause of action whatsoever against Plaintiffs, including
22 without limitation any claim for injunctive relief. It shall not
23 constitute an unreasonable interference with Settling Defendants'
24 business activities for a Plaintiff to take any action in
25 response to an emergency deemed by such Plaintiff to constitute
26 an endangerment to human health or the environment. Plaintiffs
27 agree to split samples taken on property owned or controlled by a
28 Settling Defendant if requested by the Settling Defendant.

1 B. Notwithstanding any provision of this Consent Decree,
2 the Plaintiffs retain all of their respective access authorities
3 and rights, including enforcement authorities related thereto,
4 under CERCLA and any other applicable statute or regulation.

5 IX. ACCESS TO INFORMATION

6 A. The Settling Defendants shall provide to the
7 Plaintiffs, upon request, copies of all non-privileged documents
8 and information within their possession or control or that of
9 their contractors or agents relating to the NHOU Site Interim
10 Remedial Action, including, but not limited to, sampling,
11 analysis, chain of custody records, manifests, trucking logs,
12 receipts, reports, sample traffic routing, correspondence, or
13 other documents or information related to the NHOU Site Interim
14 Remedial Action.

15 B. The Settling Defendants may assert business
16 confidentiality claims covering part or all of the documents or
17 information submitted to the Plaintiffs under this Consent Decree
18 to the extent permitted by and in accordance with Section
19 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R.
20 § 2.203(b). Documents or information determined to be
21 confidential by EPA will be afforded the protection specified in
22 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality
23 accompanies documents or information when they are submitted to
24 either Plaintiff, or if EPA has notified the Settling Defendants
25 that the documents or information are not confidential under the
26 standards of Section 104(e)(7) of CERCLA, the public may be given
27 access to such documents or information without further notice to
28 the Settling Defendants.

1 C. The Settling Defendants may assert that certain
2 documents, records, and other information are privileged under
3 the attorney-client privilege or any other privilege recognized
4 by federal or state law. If the Settling Defendants assert such
5 a privilege in lieu of providing documents, they shall provide
6 the Plaintiffs with the following: (i) the title of the
7 document, record, or information; (ii) the date of the document,
8 record, or information; (iii) the name and title of the author of
9 the document, record, or information; (iv) the name and title of
10 each addressee and recipient; (v) a description of the subject of
11 the document, record, or information; and (vi) the privilege
12 asserted. However, no documents, reports, or other information
13 created or generated pursuant to the requirements of this or any
14 other consent decree with the United States shall be withheld on
15 the grounds that they are privileged. If a claim of privilege
16 applies only to a portion of a document, the document shall be
17 provided to Plaintiffs in redacted form to mask the privileged
18 information only.

19 D. No claim of confidentiality or privilege shall be made
20 with respect to any document that falls within Section
21 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604(e)(7)(F).

22 E. Notwithstanding any provision of this Consent Decree,
23 the Plaintiffs retain all of their respective information
24 gathering authorities and rights, including enforcement
25 authorities related thereto, under CERCLA and any other
26 applicable statute or regulation.

27 X. RETENTION OF RECORDS

28 A. Until ten (10) years after the entry of this Consent

1 Decree, each Settling Defendant shall preserve and retain all
2 records and documents now in its possession or control or which
3 come into its possession or control that relate in any manner to
4 releases of hazardous substances or liability for response
5 actions taken at the NHOU Site or the liability of any person for
6 releases of hazardous substances or liability for response
7 actions conducted and to be conducted at the NHOU Site,
8 regardless of any corporate retention policy to the contrary.

9 B. At the conclusion of this document retention period,
10 the Settling Defendants shall notify the Plaintiffs at least
11 ninety (90) days prior to the destruction of any such records or
12 documents, and, upon request by either Plaintiff, the Settling
13 Defendants shall deliver any such records or documents to the
14 Plaintiff who made the request. The Settling Defendants may
15 assert that certain documents, records, and other information are
16 privileged under the attorney-client privilege or any other
17 privilege recognized by federal or state law. If the Settling
18 Defendants assert such a privilege, they shall provide the
19 Plaintiffs with the following: (i) the title of the document,
20 record, or information; (ii) the date of the document, record, or
21 information; (iii) the name and title of the author of the
22 document, record, or information; (iv) the name and title of each
23 addressee and recipient; (v) a description of the subject of the
24 document, record, or information; and (vi) the privilege
25 asserted. However, no documents, reports, or other information
26 created or generated pursuant to the requirements of this or any
27 other consent decree with the United States shall be withheld on
28 the grounds that they are privileged. If a claim of privilege

1 applies only to a portion of a document, the document shall be
2 provided to Plaintiffs in redacted form to mask the privileged
3 information only.

4 C. Each Settling Defendant hereby certifies, individually,
5 that it has not since notification of potential liability by the
6 United States or the State or the filing of suit against it
7 regarding the NHOU Site altered, mutilated, discarded, destroyed,
8 or otherwise disposed of any records, documents, or other
9 information relating to its potential liability regarding the
10 NHOU Site which are the sole record of factual information,
11 except as such documents are destroyed or altered in the ordinary
12 course of Settling Defendants' business and in compliance with
13 State and federal law, and have not been destroyed for an
14 improper purpose. Each Settling Defendant further warrants that
15 it has fully complied with any and all EPA requests for
16 information pursuant to Sections 104(e) and 122(e) of CERCLA, 42
17 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of the Resource
18 Conservation and Recovery Act, 42 U.S.C. § 6927.

19 XI. NOTICES AND SUBMISSIONS

20 Whenever, under the terms of this Consent Decree, notice is
21 required to be given or a document is required to be sent by one
22 Party to another, it shall be directed to the individuals at the
23 addresses specified below, unless those individuals or their
24 successors give notice of a change to the other Parties in
25 writing. Written notice as specified herein shall constitute
26 complete satisfaction of any written notice requirement of the
27 Consent Decree with respect to the United States, EPA, the State,
28 and the Settling Defendants, respectively.

1 As to the United States:

2
3 David B. Glazer
4 Environmental Enforcement Section
5 Environment and Natural Resources Division
6 United States Department of Justice
7 301 Howard Street, Suite 870
8 San Francisco, California 94115

9 Chief, Environmental Enforcement Section
10 Environment and Natural Resources Division
11 U.S. Department of Justice
12 P.O. Box 7611
13 Ben Franklin Station
14 Washington, D.C. 20044
15 Re: Case No. 90-11-3-1149

16 As to EPA:

17 David A. Seter
18 Remedial Project Manager — North Hollywood Operable Unit
19 San Fernando Valley Superfund Site
20 Hazardous Waste Management Division
21 U.S. Environmental Protection Agency, Region IX
22 75 Hawthorne Street
23 San Francisco, California 94105

24 Marie M. Rongone
25 Assistant Regional Counsel
26 U.S. Environmental Protection Agency, Region IX
27 75 Hawthorne Street, RC-3-3
28 San Francisco, California 94105

As to the State of California Department of Toxic Substances Control:

20 Ann Rushton
21 Deputy Attorney General, Environment Section
22 California Department of Justice
23 300 South Spring Street, #5000
24 Los Angeles, California 90013

25 Chief, Site Mitigation Branch
26 Department of Toxic Substances Control, Region 3
27 1011 North Grandview Avenue
28 Glendale, California 91201

As to the Settling Defendants: [contact and address to be supplied by each Settling Defendant]

For AlliedSignal, Inc.

For Hawker Pacific, Inc.

- 1 For Parker-Hannifin Corporation
- 2 For Inchcape, Inc.
- 3 For Gordon and Peggy Wagner
- 4 For Joseph Basinger
- 5 For California Car Hikers Service, Inc.
- 6 For Los Angeles Byproducts, Inc.
- 7 For Crown Disposal Company, Inc.
- 8 For Western Waste Industries
- 9 For Browning-Ferris Industries
- 10 For E.I. DuPont De Nemours
- 11 For HR Textron, Inc.
- 12 For AVX Filters Corporation
- 13 For Price Pfister, Inc.
- 14 For Nupla Corporation
- 15 For Holchem, Inc.
- 16 For Chase Chemical Company, Inc.
- 17 For Herman and Isabel Benjamin
- 18 For The Benjamin Family Trust

19 XII. RETENTION OF JURISDICTION

20
21 This Court shall retain jurisdiction of this matter for the
22 purpose of enforcing the terms of this Consent Decree.

23 XIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

24 A. This Consent Decree shall be lodged with the Court for
25 a period of thirty (30) days for public notice and comment. The
26 Plaintiffs reserve the right to withdraw or withhold their
27 consent if the comments regarding the Consent Decree disclose
28 facts or considerations that indicate that this Consent Decree is
inappropriate, improper, or inadequate. The Settling Defendants

1 consent to the entry of this Consent Decree without further
2 notice.

3 B. If for any reason this Court, or upon appeal, a higher
4 court should decline to approve this Consent Decree in the form
5 presented, this agreement is voidable as to a Settling Defendant
6 by written notice by such Settling Defendant to all other
7 parties, or as to either Plaintiff by written notice by such
8 Plaintiff to all other parties, and the terms of the agreement
9 may not be used as evidence in any litigation between any of the
10 remaining Parties to this Consent Decree and that Settling
11 Defendant or Plaintiff as to whom this Consent Decree is void.

12 XIV. SECTION HEADINGS

13 The section headings set forth in this Consent Decree and
14 its Table of Contents are included for convenience or reference
15 only and shall be disregarded in the construction and
16 interpretation of any of the provisions of this Consent Decree.

17 XV. SIGNATORIES

18 Each undersigned representative of a Settling Defendant to
19 this Consent Decree, the Assistant Attorney General for the
20 Environment and Natural Resources Division of the United States
21 Department of Justice, and the Deputy Attorney General of the
22 California Department of Justice certifies that he or she is
23 fully authorized to enter into the terms and conditions of this
24 Consent Decree and to execute and legally bind such party to this
25 document.

26 SO ORDERED THIS _____ DAY OF _____, 19__.

27
28 _____
United States District Judge

1 THE UNDERSIGNED PARTIES enter into this Consent Decree
2 in the matter of U.S. v. Allied-Signal, Inc., et al., and
3 California v. Allied-Signal, Inc., et al., 93-6490-MRP, North
4 Hollywood Operable Unit/San Fernando Valley Area 1 Site.

5
6 FOR THE UNITED STATES OF AMERICA

7 Date: _____

8 LOIS J. SCHIFFER
9 Assistant Attorney General
10 Environment and Natural Resources
11 Division
12 U.S. Department of Justice

13 Date: _____

14 DAVID B. GLAZER
15 Environmental Enforcement Section
16 Environment and Natural Resources
17 Division
18 U.S. Department of Justice

19 Date: _____

20 FELICIA MARCUS
21 Regional Administrator, Region IX
22 U.S. Environmental Protection Agency

23 Date: _____

24 MARIE M. RONGONE
25 Assistant Regional Counsel, Region IX
26 U.S. Environmental Protection Agency
27
28

FOR THE STATE OF CALIFORNIA

Date: _____

Hamid Saebfar
Chief, Site Mitigation Branch
California Department of Toxic
Substances Control, Region 3

Date: _____

ANN RUSHTON
Deputy Attorney General
California Department of Justice

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of U.S. v. Allied-Signal, Inc., et al., 93-6490-MRP, and
3 California v. Allied-Signal, Inc., et al., 93-6570-MRP, North
4 Hollywood Operable Unit/San Fernando Valley Area 1 Site.

5 FOR DEFENDANT: _____ (Name of Defendant)

6
7
8 _____ (Name and Title of Signatory)

9
10 Dated: _____

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U.S. EPA CONCURRENCES

OFFICIAL FILE COPY

1987 EPA Memo

EXHIBIT “5”



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

215 Fremont Street
San Francisco, Ca. 94105

2 3 SEP 1987

MEMORANDUM

SUBJECT: Record of Decision for a Remedial Action
for Area 1 of the San Fernando Valley
Superfund sites

FROM: *Jeff Gelikson*
Jeff Gelikson
Acting Director,
Toxics and Waste Management Division (T-1)

TO: Judith E. Ayres
Regional Administrator (RA)

A Record of Decision to select a remedial action (RA) for Area 1 of the San Fernando Superfund sites is attached for your signature. Also attached are briefing documents from the briefing for you and the Division Directors on August 14, 1987 describing the selection process and the basis for our determination that a groundwater collection and conveyance system of shallow groundwater extraction wells and collector pipeline, aeration tower, and granular activated carbon-air filtering units, is the most cost-effective remedial alternative for the site that adequately protects human health and the environment.

As you know, EPA Headquarters delegated the authority to sign this Record of Decision from the Assistant Administrator for Solid Waste and Emergency Response to the Regional Administrator. Upon your signature, the Los Angeles Department of Water and Power will be given authorization to begin construction of the RA. The construction of the selected alternative will require six months to complete.

Based on the Operable Unit Feasibility Study, the Administrative Record, the Summary of Alternatives Analysis, and the Community Relations Responsiveness Summary, I request that you sign the Record of Decision selecting groundwater extraction and treatment as the cost-effective remedial action for Area 1 of the San Fernando Valley Superfund sites. I am available to discuss this matter in more detail if you have any questions concerning the attached Record of Decision package.

Attachment

1.0 SITE LOCATION AND DESCRIPTION

The North Hollywood-Burbank Well Field is located within the North Hollywood National Priorities List (NPL) Site, which is one of four NPL sites in the San Fernando Valley. It is also located in the San Fernando Valley Groundwater Basin. The sites were proposed for inclusion on the NPL because of the discovery of trichloroethylene and other volatile organic contaminants (VOCs) in the groundwater. The San Fernando Valley Groundwater Basin comprises 112,000 acres of valley fill situated among the Coastal Ranges within the Los Angeles metropolitan area (Figure 1-1). The area is used for residential, commercial, and industrial purposes. Groundwater from the basin is distributed by various municipalities and water districts to the residents of the metropolitan area. The Los Angeles Department of Water and Power (DWP) operates the North Hollywood-Burbank Well Field to provide drinking water to the residents of the City of Los Angeles, located to the south of the San Fernando Valley.

The North Hollywood-Burbank Well Field is situated in the part of the San Fernando Groundwater Basin with the best aquifer characteristics and therefore provides a large proportion of the groundwater produced from the basin. The eastern half of the basin, which includes the North Hollywood-Burbank Well Field, is underlain by alluvial deposits consisting of coarse materials, such as sands and gravels, interbedded with localized lenses of clays and silts. As a result, the area is characterized by high soil permeabilities and excellent aquifer quality. The North Hollywood-Burbank Well Field provides 80% of the groundwater that DWP produces from the San Fernando Valley Groundwater Basin. This accounts for approximately 10% of DWP's total water supply.

The San Fernando Groundwater Basin can provide drinking water for approximately 500,000 people residing in the San Fernando Valley and Los Angeles. In times of water shortages, the groundwater shortage can be drawn upon to supply about one million people. It is also an important source of water for the Cities of Burbank, Glendale, and San Fernando.

2.0 SITE HISTORY

Investigation of contamination in the North Hollywood-Burbank Well Field began with the discovery, in 1980, of trichloroethylene (TCE) and tetrachloroethylene (PCE) in one quarter of DWP's wells in San Fernando Valley Groundwater Basin. In July, 1981, DWP and the Southern California Association of Governments (SCAG) began a two-year study funded by EPA. The study revealed that the contamination occurs in plume patterns and is spreading with the flow of groundwater toward the southeast, at a rate of approximately 300 feet per year. Following the completion of the study, DWP began a program to control the spread of contamination; this involved preferential pumping and blending of the contaminated groundwater with uncontaminated surface water supplies. In 1984, the North Hollywood area, including DWP's North Hollywood-Burbank Well Field, was proposed by EPA, along with three other well field sites within the San Fernando Valley Groundwater Basin, for inclusion on the National Priorities List (NPL).

In 1985, EPA and its contractor, Camp Dresser & McKee Inc. (CDM), evaluated existing data concerning the North Hollywood NPL Site and concluded that adequate information was available to justify a Fast-Track evaluation of the North Hollywood-Burbank Well Field. In March of 1986, a cooperative agreement was signed between EPA and DWP, authorizing DWP to perform a Fast-Track evaluation by preparing an Operable Unit Feasibility Study (OUFS). The objective of the OUFS is to recommend an interim remedial measure, consistent with the final remedial solution, that will slow down or halt the migration of contamination in the groundwater prior to the Remedial Investigation/Feasibility Study (RI/FS) process. An OUFS report was prepared documenting the decision process in recommending a remedial alternative for the well field. The DWP recommended the extraction of contaminated groundwater and its treatment, using aeration and granular activated carbon, to lower contaminant levels to State Action Levels and Federal Maximum Contaminant Levels (MCLs) before combining the groundwater with other water supplies.

REMEDIAL ACTION REPORT

NORTH HOLLYWOOD
OPERABLE UNIT

SAN FERNANDO VALLEY SUPERFUND SITE
AREA 1

Prepared by:

LOS ANGELES DEPARTMENT OF WATER AND POWER
WATER ENGINEERING DESIGN DIVISION
SUPERFUND GROUP
JULY 1991

2. BACKGROUND

2.1 Contamination Identified

The NH Well Field had historically provided approximately eighty percent of LADWP's groundwater from the SFVGB. Data collected and compiled by LADWP in the early 1980s indicated that trace amounts of volatile organic compounds, primarily TCE and/or PCE, were present in 11 of the 35 NH Wells and that the contamination was spreading further downgradient in the SFVGB with an average of two or three additional production wells being contaminated each year. By August of 1985, groundwater from 27 of the NH Wells exceeded the State Action Level (SAL) of 5 ug/l or ppb for TCE, with several exceeding 40 ppb. The contaminant plume had moved more than 1,100 feet from 1980 to 1985 (Figure No. 1). Groundwater contamination has forced the cities of Los Angeles and Burbank to shut down a number of their production wells.

In 1986, four areas in the SFVGB were placed on the EPA's National Priorities List. The NHOU Record of Decision (ROD) was signed in September 1987 to specify an interim remedial action. To limit or halt the spread of contamination to those downgradient areas of the groundwater aquifer which were still free of contamination, the NHOU ROD specified an interim remedial action to include the extraction of groundwater from the contaminated portions of the NH Well Field area to create a localized drawdown for containment. The NHOU interim remedial action, a small pump-and-treat system, is designed to extract up to 2,000 gpm to develop a "capture zone" for the contamination in the area and to remove the contamination from the groundwater by using aeration treatment. The treated groundwater is then routed by pipeline into the LADWP's water distribution system.

2.2 Site Characteristics

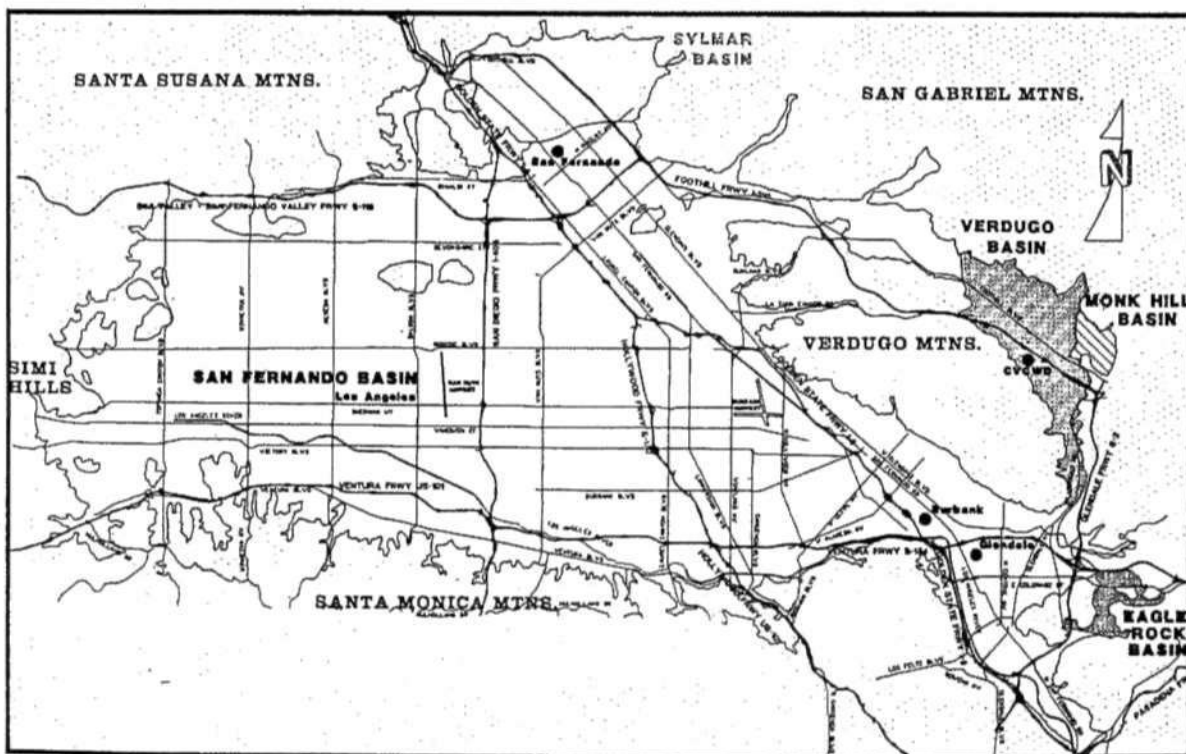
Geologic and hydrogeologic data that were available for this portion of the SFVGB indicated that it was made up of alluvial deposits composed of unconsolidated gravels and sand, with an intermittent layer of localized lenses of silt and clay located generally at a depth of 300 feet below the ground surface. Generally, the regional hydraulic gradient favors groundwater flow in a southeasterly direction. The horizontal groundwater flow velocity is estimated to be 300-400 feet per year in this localized area due to the high aquifer permeability.

UPPER LOS ANGELES RIVER AREA WATERMASTER

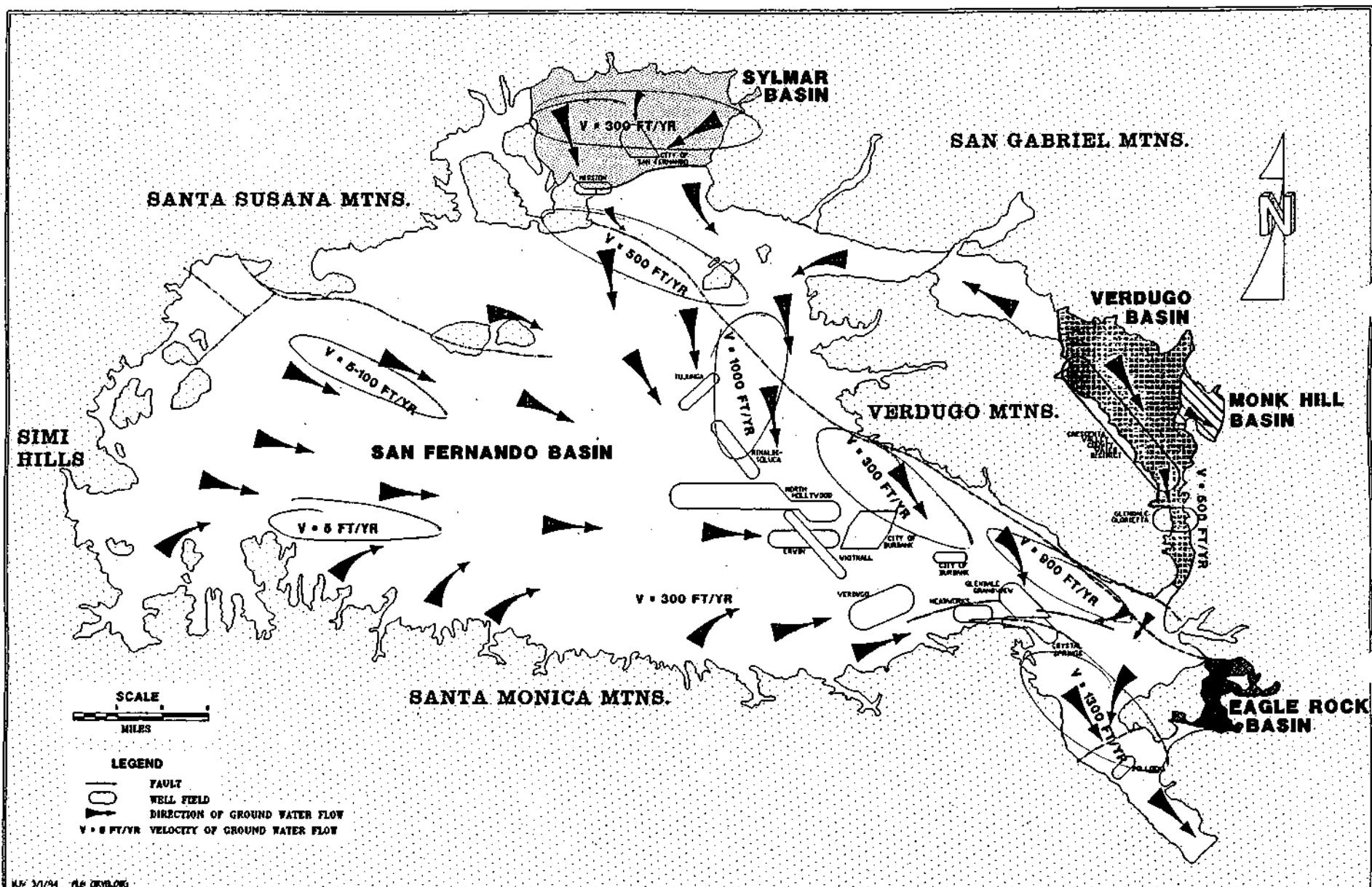
CITY OF LOS ANGELES VS. CITY OF SAN FERNANDO, ET AL
CASE NO. 650079 - COUNTY OF LOS ANGELES

WATERMASTER SERVICE IN THE UPPER LOS ANGELES RIVER AREA LOS ANGELES COUNTY

1992-93 WATER YEAR
OCTOBER 1, 1992 - SEPTEMBER 30, 1993



MAY 1994



1992-93 Water Year
ULARA Watermaster
Report

Upper Los Angeles River Area: Estimated Directions and Velocities of Ground Water Flow

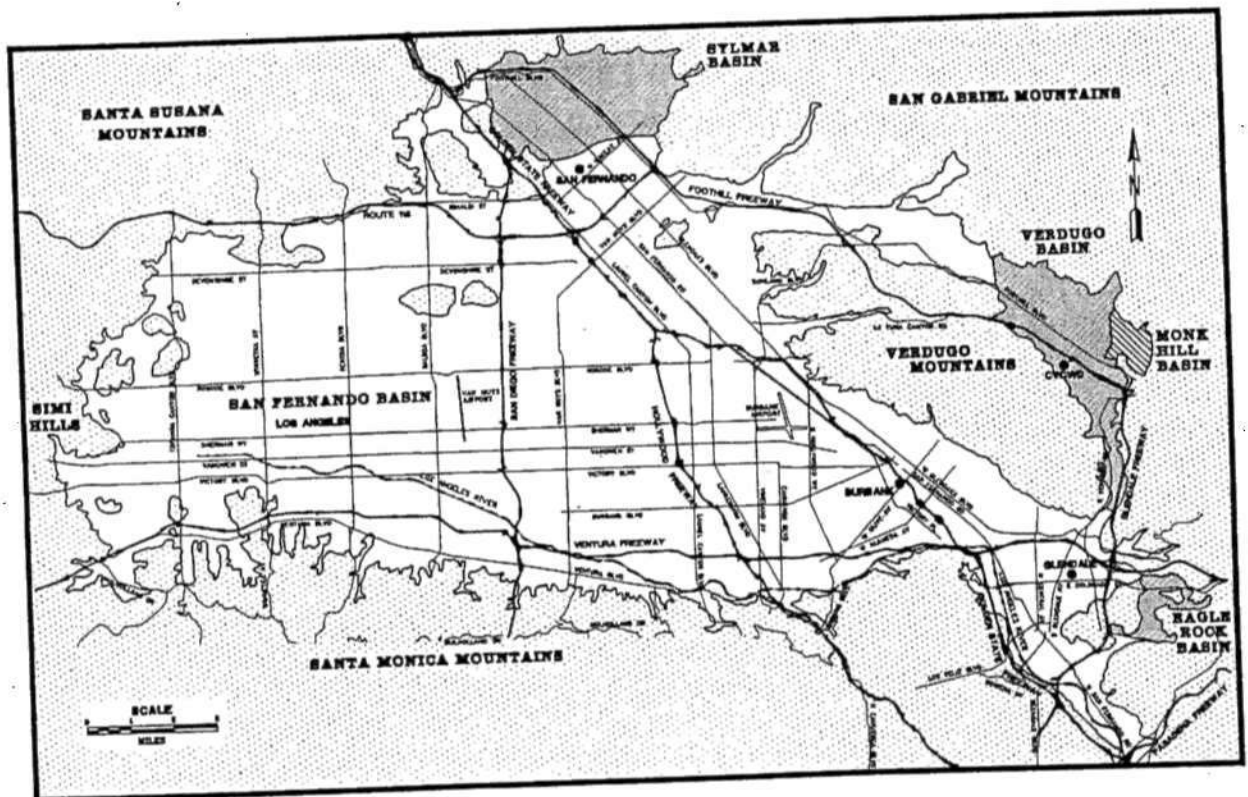
PLATE
14

UPPER LOS ANGELES RIVER AREA WATERMASTER

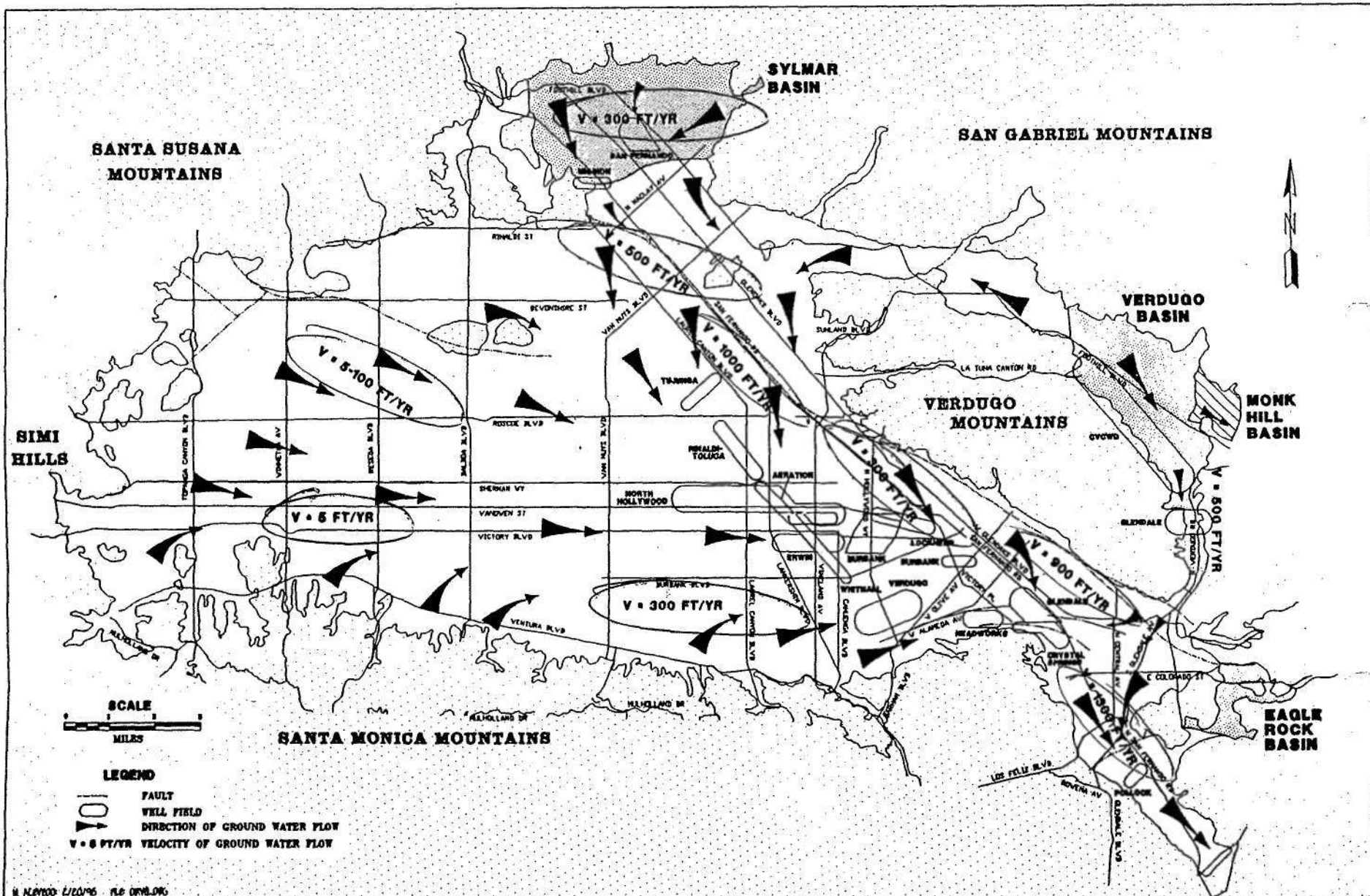
CITY OF LOS ANGELES VS. CITY OF SAN FERNANDO, ET AL
CASE NO. 650079 - COUNTY OF LOS ANGELES

WATERMASTER SERVICE IN THE UPPER LOS ANGELES RIVER AREA LOS ANGELES COUNTY

1994-95 WATER YEAR
OCTOBER 1, 1994 - SEPTEMBER 30, 1995



MAY 1996



1994-95 Water Year
ULARA Watermaster
Report

Upper Los Angeles River Area
Estimated Directions and Velocities of Groundwater Flow

PLATE
14

**Settlement Agreement Mutual
General Release**

EXHIBIT “6”

SETTLEMENT AGREEMENT
AND
MUTUAL GENERAL RELEASE

This Settlement Agreement and Mutual General Release (the "Agreement" or this "Agreement") is entered into on November 1, 1999, by and between Herman Benjamin, both individually and as Trustee of the Benjamin Family Trust Dated October 13, 1987, Isabel Benjamin, both individually and as Trustee of the Benjamin Family Trust Dated October 13, 1987, and Chase Chemical Co., Inc. (hereafter "Chase Chemical"), a dissolved corporation, on the one hand, (hereafter jointly, severally, and collectively referred to as the "Benjamin Parties"), and Holchem, Inc, a corporation ("Holchem"), HCI USA Distribution Companies, Inc., a corporation, Holland Chemical International N.V., a corporation, and Holland Chemical International, Ltd., a liquidated corporation (hereafter jointly, severally, and collectively referred to as the "Holchem Parties"), on the other hand, with reference to the following:

RECITALS

A. Herman Benjamin is currently the owner, in fee, of that real property, and all improvements thereon, consisting of approximately 2.25 acres, located in Pacoima, California, at 13540 and 13546 Desmond Street (hereafter collectively referred to as the "Property"). There are two buildings on the Property; one contains offices and packaging operations and the other is a large warehouse, consisting of in the aggregate, a total size of approximately 28,000 square feet.

B. Herman Benjamin first acquired title to the Property in or about 1968.

C. From approximately 1968, until July 1, 1987, Herman Benjamin as past president and co-shareholder of Chase Chemical, and Chase Chemical conducted business operations on the Property as a chemical storage and distribution business. A California corporation, Chase Chemical dissolved through the California statutory procedure in February, 1988, and has been fully liquidated and wound up. Chase Chemical has no officers or board of directors, but Herman Benjamin was its

last President, and a co-shareholder.

D. Effective July 1, 1987, under an Agreement for Sale of Assets, certain assets of Chase Chemical were sold to Holchem for a purchase price of approximately \$1,000,000.00, (hereafter referred to as the "Asset Sale Agreement").

E. Concurrent with the sale of the certain assets from Chase Chemical to Holchem, Holchem entered into a ten (10) year lease with Herman Benjamin, commencing on July 1, 1987. The lease has been renewed for an additional five (5) year term through June 30, 2002. The lease and all amendments and modifications thereto are hereafter collectively referred to as the "Lease" or the "Lease Agreement".

F. In October of 1987, fee title to the Property was transferred from Herman Benjamin and his wife, Isabel Benjamin, to the Benjamin Family Trust Dated October 13, 1987 (hereafter the "Benjamin Trust") with Herman and Isabel Benjamin acting as Co-Trustees. Thereafter, in 1999 fee title to the Property was transferred to Herman Benjamin and Isabel Benjamin, husband and wife, and thereafter, in 1999, fee title to the Property was transferred to Herman Benjamin, who is now the sole owner of the Property.

G. Since July 1, 1987 Holchem, has conducted and continues to conduct a chemical storage and distribution business on the Property.

H. Prior to approximately December 1998, the Property had been improved by nineteen (19) chemical underground storage tanks ("USTs"). Commencing in or about December of 1998, according to Holchem these USTs were removed in accordance with all applicable laws and regulations, and replaced with two (2) 20,000 gallon, and one (1) 21,000 gallon, double wall, multi-component underground tanks.

I. The Property also contains approximately twenty-one (21) above ground chemical storage tanks ("AGSTs"), a drum rinse area with clarifier that is used for pH control, and two (2) sumps for runoff protection, and drum storage areas.

J. In August of 1988, the soil and groundwater beneath the surface of the Property was tested by the Benjamin Parties and found to be contaminated with various solvents and chemicals.

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K. From 1988 to 1991, six (6) groundwater monitoring wells were installed on the Property by the Benjamin Parties to test and/or monitor the condition of the soil and groundwater of the Property.

L. The soil and/or groundwater beneath the surface of the Property is now believed to be contaminated with various solvents and other chemicals, including but not limited to, benzene, ethyl benzene, toluene, xylenes, acetone, methyl ethyl ketone (MEK), 4-methyl, 2-pentanone (MIBK), 2-hexanone, methylene chloride, 1,1,1 trichloroethane (TCA), trichloroethylene (TCE), 1,1-dichloroethane (1,1-DCA), 1,2-dichloroethane (1,2-DCA), tetrachloroethylene (PCE), 1,1-dichloroethylene (1,1-DCE) cis-1,2-dichloroethene (Cis-1,2 DCE), trans-1,2-dichloroethane (trans-1,2-DCE), chloroform, naphthalene, 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, and possibly other "hazardous substances," and/or "Hazardous Materials" (as defined in Section 9.1.1 below), "toxic substances," "corrosive materials," "irritants," "hazardous waste," "contaminants" and/or "pollutants" and/or petroleum products or any fraction thereof or additives thereto, as such terms are or may be defined under any federal, state or local statute, rule, regulation or ordinance, including but not limited to, the provisions of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et seq.* "CERCLA"), the Resource, Conservation and Recovery Act ("RCRA" - 42 U.S.C. § 6901 *et seq.* "RCRA"), the Hazardous Substance Account Act (California Health & Safety Code Section 25300 *et seq.*), the California Hazardous Waste Control laws (California Health & Safety Code Section 25100 *et seq.*), the California Porter-Cologne Act (California Water Code § 13000 *et seq.*), and any other related environmental statutes, rules, regulations, or ordinances. The pollutants and/or contaminants referenced above which may now or hereafter require regulation, monitoring and/or remediation under any environmental statute, rule, regulation, or ordinance, which such pollutants and/or contaminants previously existed, now exist and/or hereafter may exist in the air, soil and/or groundwater in, on, over, about, under and/or beneath the Property and/or those having migrated and/or hereafter migrating and/or threatening to migrate, to or from the Property, are hereafter referred to as the "Subject Contamination."

M. Holchem has been in exclusive possession as a tenant of the Property for over twelve

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(12) years and is aware of many of its attributes, physical characteristics, and/or deficiencies of its improvements and/or fixtures.

N. On April 21, 1997 the California Department of Toxic Substances Control ("DTSC") issued an Imminent and Substantial Endangerment Order ("I&SE Order") against the Benjamin Parties and Holchem. The Benjamin Parties did not contest the I&SE Order, but Holchem disputed, and continues to dispute any liability or responsibility under the I&SE Order or under any similar or related claim, order or complaint.

O. On January 23, 1998 Herman Benjamin, both individually and as Co-Trustee of the Benjamin Trust filed legal action in the United States District Court in and for the Central District of California (Case Number CV 98-0589 CM (JGx)) against Holchem alleging causes of action under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*) ("CERCLA"), and other causes of action, with reference to the Subject Contamination.

P. Holchem answered the complaint, denying the material allegations therein contained, and filed a counter-claim against Herman Benjamin, both individually and as Trustee of the Benjamin Trust, and a third-party complaint against Isabel Benjamin and Chase Chemical, a corporation, generally alleging that the Benjamin Parties, through their actions, inactions and omissions, caused the Subject Contamination and that said parties were responsible for assessing and remediating all of the Subject Contamination under CERCLA, the Lease, the Asset Sale Agreement and under other state statutory and common laws. The Benjamin Parties have denied the material allegations of said counter-claim and third party complaint. The aforementioned federal lawsuit including Holchem's counter-claim and third-party claim, shall hereafter be collectively referred to as the "Federal Action."

Q. The Parties hereto understand and acknowledge that at or about the time of the execution of this Agreement, the DTSC, the Hazardous Waste Control Account, the Hazardous Substances Account, the Toxic Substances Account and the Site Remediation Account (hereinafter collectively the "State") will be filing an action in the United States District Court in and for the Central District of California, seeking response costs and declaratory relief pursuant to CERCLA and

State Superfund, California Health and Safety Code § 25300 *et seq.*, against Holchem, Herman Benjamin, both individually and as Trustee of the Benjamin Trust, Isabel Benjamin, both individually and as Trustee of the Benjamin Family Trust Dated October 13, 1987, and Chase Chemical, a dissolved California corporation (hereinafter the "State CERCLA Action").

R. The Parties to this Agreement agree that the State CERCLA Action will be resolved by the Benjamin Parties and Holchem entering into a Consent Decree with the State in the State CERCLA Action (hereafter referred to as the "Consent Decree"), within seven(7) days of their execution of this Agreement.

S. The Consent Decree will require the Parties to this Agreement to pay certain past oversight costs, and will require Holchem to pay future oversight costs, and to, among other things, require Holchem to take certain Removal Actions, prepare a Remedial Investigation/Feasibility Study, and prepare a Remedial Action Plan. The Parties hereto understand and agree that their commitment to enter into the Consent Decree, which is substantially the same in every material respect as the Consent Decree attached to this Agreement and marked as Exhibit "A," is a material consideration to the Parties' decision to enter into this Agreement.

T. On September 14, 1998 the People of the State of California *ex rel.* California Attorney General, filed a complaint for civil penalties and injunctive relief against Holchem and Herman Benjamin, individually and as Trustee of the Benjamin Family Trust, Chase Chemical, and DOE defendants pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, also known as Proposition 65, California Health and Safety Code §§ 25249.5 *et seq.*, and the Unfair Competition Act Business and Professions Code §§ 17200 *et seq.*, in connection with alleged discharges of chemicals known to the State of California to cause cancer or reproductive toxicity. This lawsuit and all claims related thereto and all amendments related thereto shall hereafter be referred to as the "State Prop. 65 Action."

U. The State Prop. 65 Action was amended on or about December 10, 1998. Holchem, Herman Benjamin, both individually and as Trustee of the Benjamin Family Trust and Chase Chemical, thereafter answered the State Prop. 65 Action, denying the material allegations contained

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therein. The Benjamin Parties and Holchem contemplate settling the State Prop. 65 Action by their agreeing to a Consent Judgment with the People of the State of California, with the Parties each bearing their own costs and fees in settling the State Proposition 65 Action and in complying with the Consent Judgment. The parties to this Agreement agree that the State Prop. 65 Action will be resolved by the Benjamin Parties and Holchem agreeing to the Consent Judgment, which is substantially the same in every material respect as the Consent Judgment attached to this Agreement and marked as Exhibit "B", with the People of the State of California (hereafter referred to as "Consent Judgment"), within seven (7) days of their execution of this Agreement.

V. The Parties to this Agreement have individually and jointly participated in extensive litigation and extensive investigation, discussions and evaluation of the matters at issue in the Federal Action, the State Prop. 65 Action, the forthcoming State CERCLA Action, and in assessing the Subject Contamination and various other issues concerning the Property, including their disputes involving the Lease, the Asset Sale Agreement and the Consent Decree.

X. The Benjamin Parties have been defended in the Federal Action by Fireman's Fund Insurance Company, The Home Insurance Company, and National Union Fire Insurance Company of Pittsburgh, PA, pursuant to one or more insurance policies issued by the aforementioned companies. Other insurance policies insuring the Benjamin Parties, issued by Great Southwest Fire Insurance Company and Interstate Fire & Casualty Company, also exist. All of these insurers of the Benjamin Parties shall hereafter be referred to jointly, severally and collectively as the "Insurers."

Y. The Insurers will be funding the Settlement Funds to be paid to Holchem under this Agreement. The Benjamin Parties, as an Insurer condition of such payment, will be relinquishing or releasing any known insurance which would defend and/or indemnify them from any claim or liability arising out of or related to the Property. Therefore, it is an essential part of this Agreement that the Holchem Parties provide to the Benjamin Parties the indemnity, hold harmless and defense as provided in Section 9 of this Agreement.

Z. In addition to the Settlement Funds to be paid to Holchem and in light of the parties dispute over responsibility for the Subject Contamination and given Holchem's obligation assumed

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in this Agreement to provide an indemnification, hold harmless and defense to the Benjamin Parties from all claims arising out of or related to the Subject Contamination, as additional consideration to Holchem for its entering into this Agreement, Herman Benjamin shall convey the fee title to the Property to Holchem through a Grant Deed, for the reduced purchase price of One Hundred Twenty-Five Thousand Dollars (\$125,000), which is a purchase price substantially lower than the \$1.59 million market value assessment of the Property obtained by the Benjamin Parties in February of 1999. The fee title to the Property is being conveyed to Holchem for a reduced purchase price in consideration for the releases and dismissals provided in this Agreement, and Holchem's obligations assumed in this Agreement to defend, indemnify and hold the Benjamin Parties harmless in accordance with Section 9 of this Agreement, and in part for its commitment to carry out the requirements of the Consent Decree, as well as in exchange for Holchem's commitment to assume the Benjamin Parties' responsibility, to the extent such responsibility exists, for the assessment and/or remediation of the Subject Contamination.

AA. Mindful of the expense and uncertainty of litigation, the Parties to this Agreement now desire to settle and resolve any and all past grievances and disputes between them, including those presently existing, and/or which could potentially now or may hereafter exist, that concern or in any way relate to the Lease, the Asset Sale Agreement, the Subject Contamination, the Property, or the Federal Action, the State Prop. 65 Action and the State CERCLA Action, on an amicable basis by entering into the terms and conditions of this Agreement.

THEREFORE, in consideration of the mutual agreements, covenants, releases, and consideration set forth in this Agreement, the Parties hereto agree to forever waive, release and discharge each other from the subject claims and to settle the above-referenced disputes according to the following provisions:

1. **CONSIDERATION TO HOLCHEM AND THE BENJAMIN PARTIES**

1.1 Concurrent with the performance of the requirements of Paragraph 1.2.1, below, by no later than November 12, 1999, the Benjamin Parties, from funds provided by the Benjamin Parties' Insurers, shall pay and deliver to a representative of Holchem at the office of the Escrow

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Holder (as defined below), the Insurers good and sufficient checks or drafts totaling the sum of One Million Three Hundred Fifty Thousand US Dollars (\$1,350,000.00) (hereafter collectively referred to as the "Settlement Funds.") The checks or drafts must total \$1,350,000, and are to be made payable to "Holchem, Inc." and delivered to a representative of Holchem within one (1) day of confirmation of the recordation of the Grant Deed referred to in Section 1.2 and on or before November 12, 1999.

1.2 On or before November 12, 1999, Herman Benjamin shall sell and convey the Property to Holchem for a purchase price equal to One Hundred Twenty-Five Thousand US Dollars (\$125,000.00). The transfer of the Property shall be accomplished through an escrow to be established with First American Title Insurance Company ("Escrow Holder") pursuant to the following procedures. Escrow shall close on or before November 12, 1999.

1.2.1 Within a sufficient period prior to the close of escrow necessary to provide for a close of escrow on or before November 12, 1999, Holchem shall deliver to the Escrow Holder a cashier's check, issued by a California bank, made payable to First American Title, or wire funds to the account of the Escrow Holder, the sum of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) for the purchase of the Property ("Purchase Payment"). Upon confirmation of the recordation of the Grant Deed, and concurrent with the delivery of the Settlement Funds to the representative of Holchem, the Escrow Holder shall forthwith forward and/or hand deliver the Purchase Payment, made payable to Herman Benjamin, to the attorneys (as indicated in paragraph 12.18.1) for Herman Benjamin.

1.2.2 Within a sufficient period prior to the delivery of the Settlement Funds pursuant to Section 1.1 above, and in any event at least one business day prior to November 12, 1999, Herman Benjamin shall deliver to the Escrow Holder a Grant Deed to the Property conveying the fee title to the Property to Holchem. Its is agreed between the Parties that the recordation of the Grant Deed shall effect a merger of the equitable and legal estates of the Property, thereby extinguishing the Lease. The Escrow Holder shall provide to Herman Benjamin, and Herman Benjamin shall execute and deliver back to Escrow Holder, a Non-

Foreign Affidavit pursuant to Section 1445 of the Internal Revenue Code of 1986, and State of California Form 590-RE for delivery to Holchem upon the close of escrow.

1.2.3 Holchem shall have the right to obtain from Escrow Holder a Commitment for Title Insurance ("Preliminary Report") relating to the Property, together with copies of all documents shown in Schedule B of the Preliminary Report. Holchem has obtained a Preliminary Report dated September 28, 1999, and shall have the right to review and approve the Preliminary Report and all exceptions to title reflected therein. Holchem hereby disapproves of Item 4 of the Exceptions to Title listed in the Preliminary Report concerning a lease to United Parcel Services, Inc. from the Benjamin Parties, effective as of the date of the Benjamin Parties' execution of the Agreement.. The Benjamin Parties shall provide all documentation and take all action reasonably necessary to cure Holchem's objection to Item 4 to the Preliminary Report and to have such exception to title removed from the Title Policy issued to Holchem for the Property by First American Title Insurance Company. In the event that Holchem reasonably disapproves in writing any exception contained in the Preliminary Report, or in any supplement to such report, Herman Benjamin shall, within five (5) days after notice of disapproval, use his best efforts to diligently cure such objections and shall either cure such objections on or before November 12, 1999, or notify Holchem in writing he is unable or unwilling to cure such objections. This Agreement shall automatically terminate, without further notice, and be void *ab initio* and have no further force or effect, if Holchem, within five (5) days after service of notice that Mr. Benjamin is unable or unwilling to cure objections to the Preliminary Report or to any supplement to the report, provides notice that it is rejecting title to the Property and terminating this Agreement.

1.2.4 The Benjamin Parties represent and warrant that the Property is free and clear of all monetary liens and encumbrances made or suffered by them and that the Benjamin Parties will not convey or transfer any interest said parties have in the Property to any person or entity other than Holchem, and that the Benjamin Parties will not otherwise encumber the Property.

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1.2.5 The provisions of this Section 1.2 shall constitute escrow instructions to Escrow Holder for the transfer of the Property to Holchem. However, the Parties agree to execute any further or additional escrow instructions reasonably requested by Escrow Holder, as well as Escrow Holder's standard escrow instructions, provided the same are consistent with and do not conflict with the provisions of this Agreement. In the event of any such conflict, the provisions of this Agreement shall prevail. It is acknowledged that Holchem is currently in possession of the Property as a tenant, and pursuant to its Lease for the Property, is responsible for the payment of taxes, insurance and other operating expenses. Therefore, there shall be no proration of taxes, insurance, operating expenses and/or any other items of income or expense. There shall be no proration of rental under the Lease.

1.2.6 Any returns, statements or reports required to be filed under Section 6045(e) of the Internal Revenue Code (and any similar reports required by state or local law) relating to the transfer of the Property shall be filed by Escrow Holder. The Escrow Holder shall provide evidence to Holchem and Herman Benjamin of its compliance with such requirements.

1.2.7 Escrow Holder shall cause the Grant Deed to be recorded in the Official Records of Los Angeles County, California, when Escrow Holder is in receipt of the Purchase Payment held on behalf of Herman Benjamin, Escrow Holder holds for the benefit of Holchem the other documents and instruments required to be delivered pursuant to this Section 1.2, and Escrow Holder is irrevocably committed to issue to Holchem an ALTA standard coverage owner's policy of title insurance as to the Property in the amount of One Million Five Hundred Ninety Thousand Dollars (\$1,590,000.00), showing fee title to the Property vested in Holchem ("Title Policy"), subject only to the following exceptions: (i) all non-delinquent general and special real property taxes and assessments; (ii) the matters shown on the Preliminary Report which have not been removed in accordance with the procedure set forth in Section 1.2.3; and (iii) the standard exceptions and exclusions as shown on an ALTA standard coverage owner's policy.

1.2.8 The cost of the transaction to transfer the Property to Holchem shall be at no cost, whatsoever, to Herman Benjamin, except that the Benjamin Parties shall, at their sole cost and expense, remove any monetary liens or encumbrances made or suffered by him or any of the Benjamin Parties from title to the Property as may be identified in the Preliminary Report to be obtained by Holchem. All title insurance, escrow fees, documentary transfer tax, notary fees, and recording fees shall be the sole and singular liability and responsibility of, and be solely paid by, Holchem.

1.2.9 The Benjamin Parties represent that they have procured a report of the market value of the Property by Dale Donerkiel, SRPA, SRA a California Certified General Real Estate Appraiser, who determined that the fair market value of the Property, subject to the limitations set forth in Donerkiel's report, was One Million Five Hundred Ninety Thousand Dollars (\$1,590,000.00) as of February 16, 1999, assuming the Property was not contaminated with any of the Subject Contamination. A copy of this written report will be provided to Holchem within four (4) days of the Benjamin Parties execution of this Agreement. The parties to this Agreement understand and recognize that the Property is being conveyed to Holchem for less than its fair market value in a clean condition in exchange for the releases and dismissals provided in this Agreement, Holchem's assumption of the obligation to defend, indemnify and hold the Benjamin Parties harmless from and against any and all claims arising out of or related to the Subject Contamination as further described in this Agreement, and Holchem's commitment to carry out the requirements of the Consent Decree and to assume the Benjamin Parties' responsibility, to the extent such responsibility exists, for the assessment and/or remediation of the Subject Contamination.

1.2.10 The Property, including all improvements thereto and fixtures thereon, are being sold by Herman Benjamin to Holchem AS IS, with all its current faults and deficiencies and without any representation or warranty as to its condition, including without limitation, the warranty of merchantability or fitness for any particular purpose or use. By signing this Agreement, the Parties hereto agree that the waivers and releases set forth in this

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Agreement, including the waiver of California Civil Code Section 1542, hereafter set forth, applies to the Property, its improvements and fixtures, and the transfer thereof, as well as the Lease, the Asset Sale Agreement, the Federal Action, the State Prop. 65 Action, and the State CERCLA Action, to the fullest extent as can be provided under the laws of the State of California and the laws of the United States, as provided below.

2. CERTAIN FURTHER OBLIGATIONS OF THE BENJAMIN PARTIES

2.1 The Benjamin Parties shall pay the total sum of Thirty-Five Thousand Dollars (\$35,000.00) of DTSC past oversight costs incurred in connection with the Property to the DTSC, in accordance with the terms of the Consent Decree.

2.2 The Benjamin Parties shall instruct California Environmental and Environmental Strategies Corporation, and any other environmental consultant previously retained by the Benjamin Parties, to forward to Holchem's counsel, for receipt by such counsel on or before the close of the escrow contemplated by this Agreement, all data and reports within their possession, custody, or control dated after November 1, 1997, that concern or in any way relate to the Subject Contamination, including but not limited to all such reports and other documentation forwarded to the Department of Toxic Substances Control ("DTSC"). The Benjamin Parties hereby assign to the Holchem Parties any and all rights which the Benjamin Parties may have to review and photocopy such data and reports or any other data and reports, within the possession or custody of California Environmental and/or Environmental Strategies Corporation, and shall advise said companies of this assignment, in writing, prior to the close of escrow referred to in this Agreement.

2.3 The Benjamin Parties agree that they will enter into the Consent Decree with the State in a form that is substantially the same in every material respect with the terms and provisions of the Consent Decree attached hereto and marked as Exhibit "A." The Benjamin Parties shall execute the Consent Decree within seven(7) days of their execution of this Agreement. The Benjamin Parties further represent and warrant that they will support, at their sole cost and expense, any and all motions brought before the United States District Court seeking the approval of the Consent Decree, and take all actions as may be reasonably necessary and shall use their best efforts to obtain the

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District Court's approval of such Consent Decree at their own expense.

2.4 The Benjamin Parties hereby understand and agree that any challenge the Benjamin Parties may make to any determination by the State, under the Consent Decree or otherwise, that the Benjamin Parties will not take a position that is adverse or in any way in conflict with any interest or position of Holchem, and that the Benjamin Parties shall first notify Holchem, in writing, of their proposed challenge at least seven (7) days prior to notifying the State of such challenge, and shall not submit any such challenge unless first receiving written approval from Holchem. Holchem shall not unreasonably withhold such written approval. The Benjamin Parties further understand and agree that to the extent any of the Benjamin Parties seeks to challenge any determination under the Consent Decree, or to at any time challenge the Consent Decree or attempt to avail themselves of any dispute resolution procedure under the Consent Decree, that the Benjamin Parties shall do so at their sole cost and expense and not at any cost or expense to any of the Holchem Parties.

2.5 The Benjamin Parties further agree that they will enter into a consent judgment with the People of the State of California, in a form that is substantially the same in every material respect with the terms and provisions of the Consent Judgment attached hereto and marked as Exhibit "B." The Benjamin Parties shall agree to the Consent Judgment within seven(7) days of their execution of this Agreement, and shall do so for purposes of resolving the pending State Prop. 65 Action against them. The Benjamin Parties further represent and warrant that they will support, at their sole cost and expense, any and all motions brought before the Los Angeles Superior Court seeking the approval and entry of the Consent Judgment, and shall use their best efforts and take all action as may be reasonably necessary to obtain such approval.

2.6 The Benjamin Parties agree that as of the execution of this Agreement, neither the Benjamin Parties nor any agents or representatives of the Benjamin Parties will undertake any environmental assessment or investigative work, any removal work or any remedial work or any other work that concerns or in any way relates to the Subject Contamination, without the prior written consent of Holchem. Any such environmental work conducted by the Benjamin Parties, as between Holchem and the Benjamin Parties, whether conducted before or after the date of the

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execution of this Agreement, shall be conducted at the sole cost and expense of the Benjamin Parties.

2.7 The Benjamin Parties on behalf of themselves, and their heirs, successors and assigns, hereby assign any and all rights, claims, causes of action, or rights of action of any kind or nature, either equitable or legal in nature, they presently have or may in the future have that concerns or in any way relates to the Subject Contamination, the Property, the Federal Action, the State CERCLA Action, the State Prop. 65 Action, the Consent Judgment, and/or the Consent Decree against any other party or person, except the Insurers, but including, without limitation, any insurance company that is not one of the Insurers identified above, and against any other person or entity who is or may be responsible for any part or portion of the Subject Contamination, to the Holchem Parties, and their successors and assigns (hereafter the "Assigned Claims"). In furtherance of the assignment provided for in this Section 2.7, the Benjamin Parties covenant that the separate settlement agreement between the Benjamin Parties and the Insurers provides an assignment to the Benjamin Parties of all the Insurers' present rights against any person in connection with the Federal Action, the State Prop 65 Action, and the Property, including, without limitation, any rights by way of contribution or indemnity, whether such rights arise in law, in equity, in contract or otherwise, and regardless of whether such rights arise directly, by way of subrogation, or otherwise.

2.8 The Benjamin Parties covenant and agree not to take any action which will interfere with or in any way inhibit Holchem's attempts to assess, investigate, monitor, remove and/or remediate the Subject Contamination, including Holchem's compliance with the Consent Decree and other subsequent consent decrees entered into by Holchem concerning the removal and/or remediation of the Subject Contamination. The Benjamin Parties further covenant and agree not to take any action which will interfere with or in any way inhibit Holchem's attempts to recover any costs and/or damages that concern or in any way relate to the Federal Action, the State CERCLA Action, the Subject Contamination, the Property, the Lease, the Consent Decree or the Consent Judgment, from any other person or entity which is not a party to this Agreement.

2.9 The Benjamin Parties, and each of them, represent and warrant that they have not assigned, transferred, encumbered or otherwise conveyed to any other person or entity any rights,

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title or interest that is the subject of the Assigned Claims.

2.10 The Benjamin Parties, and each of them, shall keep any and all financial information obtained in anticipation of this Agreement and/or any environmental documentation or other information they obtain from the Holchem Parties after execution of this Agreement, strictly confidential, and shall not disclose any such information to any other party or person, except to their attorneys and accountants, and except as may otherwise be required by law, without the prior written consent of Holchem.

3. CERTAIN FURTHER OBLIGATIONS OF THE HOLCHEM PARTIES

3.1 Holchem hereby assumes the liability and responsibility of the Benjamin Parties, to the extent such liability and responsibility exists, for the assessment and/or remediation of the Subject Contamination as defined in this Agreement.

3.2 Except for the sum of Thirty-Five Thousand Dollars (\$35,000.00) agreed to be paid by the Benjamin Parties directly to the DTSC under the Consent Decree, Holchem has agreed to pay for those certain DTSC oversight costs as set forth in the Consent Decree.

4. REPRESENTATIONS AND WARRANTIES OF THE HOLCHEM PARTIES

4.1 Each of the Holchem Parties represents and warrants that each is duly organized and existing under the law of the jurisdiction of its creation and present existence.

4.2 Each individual signing on behalf of each of the three (3) corporations comprising the Holchem Parties represents and warrants that he/she has the authority and power to enter into this Agreement on behalf of the corporation for which he/she is signing and that all necessary corporate resolutions and/or corporate formalities have been followed granting full authority and power to each such individual to sign this Agreement on behalf of each respective corporation and to bind each corporation to the provisions of this Agreement. Attached hereto, referenced as Exhibits "C", "D", and "E," are true and correct copies of corporate resolution forms for each of the Holchem Parties, authorizing the signature of G.W.F. Hol signing on behalf of such corporations. A copy of the original of each resolution shall then be included within the respective exhibit and shall become a part of this Agreement.

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4.3 Each of the three (3) corporations comprising the Holchem Parties represents and warrants that each of the individuals signing on behalf of their respective corporation, for whom he/she is signing, has the authority and power to enter into this Agreement on behalf of the corporation for which he/she is signing and that all necessary corporate resolutions and/or corporate formalities have been followed granting full authority and power to such individual to sign this Agreement on behalf of each respective corporation and to bind each corporation to the provisions of this Agreement.

4.4 Each of the parties constituting the Holchem Parties represents and warrants that each have not assigned or transferred to any person or entity, (nor otherwise disposed of), any Released Claim (as hereafter defined) that is within the scope of those that it has released or waived in this Agreement; and

4.5 Each of the Holchem Parties represents and warrants that this Agreement is binding upon any corporation or entity which is or may be a successor to each of the same.

4.6 Each of the Holchem Parties represents and warrants that the financial information and documentation provided to the Benjamin Parties, or to their representatives, is a fair and accurate representation, at the time of Holchem's delivery of such financial information and documentation to the Benjamin Parties, or to their representatives, of the financial condition of the Holchem Parties, including the financial resources which would be available to the Holchem Parties to perform the obligations required of the Holchem Parties pursuant to the indemnity, defense and hold harmless provisions of this Agreement. If between the time of the delivery of such financial information and documentation to the Benjamin Parties or to their representatives, and the close of the escrow provided for herein, there has been a material change in the financial condition of any of the corporations constituting the Holchem Parties, or the financial ability of any of the Holchem Parties to perform the obligations required of the Holchem Parties pursuant to indemnity, defense and hold harmless provisions of this Agreement, then the Holchem Parties shall inform the Benjamin Parties, in writing, of such change of circumstance.

5. REPRESENTATIONS AND WARRANTIES OF THE BENJAMIN PARTIES

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5.1 Herman Benjamin and Isabel Benjamin each represents and warrants that they have full power and authority to enter into this Agreement on behalf of the Benjamin Family Trust Dated October 13, 1987, and that Herman Benjamin is the last President and Herman Benjamin and Isabel Benjamin were the co-shareholders of Chase Chemical, a dissolved corporation, and that Herman Benjamin has whatever power and authority allowed for under the laws of the State of California as the last president and/or co-shareholder of a dissolved corporation, to bind the dissolved corporation to the provisions of this Agreement.

5.2 Herman Benjamin and Isabel Benjamin each represents and warrants that they have not assigned, transferred or otherwise conveyed to any other person or entity any of the "Assigned Claims," including, but not limited to, any "Released Claims" (as hereafter defined).

5.3 The Benjamin Parties each hereby represents and warrants that each is not aware of any pending or threatened claims, causes of action, or legal actions existing or alleged to exist against them, the Holchem Parties or against any other person or entity that concerns or in any way relates to the Property, the Lease or the Subject Contamination, except those expressly identified in this Agreement. The Benjamin Parties further represent and warrant that neither they nor any other person or entity authorized to act on behalf of the Benjamin Parties will, in the future, encourage, aid, assist or in any way further any such claims, demands, causes of action or legal actions of any kind or nature concerning the Property and/or the Subject Contamination, against the Benjamin Parties and/or the Holchem Parties. The Benjamin Parties will, prior to close of escrow, as a condition precedent to closing, obtain written confirmation from both California Environmental and Environmental Strategies Corporation that these entities will similarly not encourage, aid, assist or in any way further any such claims, demands, causes of action or legal actions of any kind or nature against the Benjamin Parties and/or the Holchem Parties arising out of or relating to the Property and/or the Subject Contamination. The Benjamin Parties recognize and agree that because of their attorneys and/or environmental consultants involvement in the Federal Action, the State CERCLA Action, the State Prop. 65 Action, the Consent Decree and/or the Consent Judgment, that such persons and/or entities' representation of any other person or entity in connection with the Subject

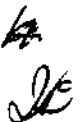
Contamination, adverse to or against any of the Benjamin Parties and/or the Holchem Parties, would result in a conflict of interest which the Benjamin Parties hereby represent and warrant they cannot and will not waive, and shall instruct their counsel and their environmental consultants to maintain the confidentiality of all information prepared and obtained in the course of their representation of the Benjamin Parties. The Benjamin Parties shall give notice to their attorneys and to any such environmental consultants that representation of any other parties or persons in connection with the Subject Contamination adverse to or against any of the Benjamin Parties and/or the Holchem Parties would result in such a conflict of interest which the Benjamin Parties will not waive. The Benjamin Parties are informed and believe that the action brought by those persons in that action entitled Carmelo Aburto et. al, v. Price Pfister et. al., in Los Angeles Superior Court, Case No. P 0022038, has been dismissed, without prejudice, and agree to provide to the attorneys for Holchem any and all documentation regarding such dismissal in their possession, custody or control, prior to the execution of this Agreement.

6. RENT OBLIGATION OF HOLCHEM

6.1 The Benjamin Parties and Holchem understand and agree that with the close of the escrow provided herein, and the receipt of the Settlement Funds by Holchem, and the receipt of the Purchase Price by the Benjamin Parties, the Holchem Parties and/or the Benjamin Parties shall have no further obligation or responsibility of any kind or nature under the Lease and/or the Asset Sale Agreement, and that any and all rental obligations and/or any other obligations or responsibilities of the Parties under the Lease and/or the Asset Sale Agreement are agreed to have been fully and completely settled and paid by accord and satisfaction.

7. CONSENT DECREE

7.1 The Benjamin Parties and Holchem agree that within seven (7) days of their execution of this Agreement, said Parties shall enter into a Consent Decree with the DTSC which is substantially the same in every material respect with Exhibit "A," attached hereto, and that the Parties to this Agreement agree to be bound by all of the terms and provisions of the Consent Decree that apply to the respective Parties as provided therein.



7.2 The Benjamin Parties shall support any motion seeking the U.S. District Court's approval of the attached Consent Decree and shall use their best efforts to obtain approval of such decree at their sole cost and expense; provided, however, that the provisions of this Agreement shall not be effected by any failure or refusal of the United States District Court to approve and/or confirm the attached Consent Decree.

8. **MUTUAL WAIVER AND RELEASE OF CLAIMS**

8.1 Except for the rights, obligations, liabilities, indemnities, and assumptions established and provided for by this Agreement, which the Parties acknowledge are not effected by the release and/or waiver provisions hereafter set forth, and effective only upon payment and receipt of the amounts set forth in Sections 1.1 and 1.2, and the transfer of title of the Property to Holchem in accordance with Section 1.2, the Holchem Parties, and their respective present and former representatives, including, without limitation, their respective agents, employees, servants, directors, officers, trustees, affiliates, subsidiary companies, parent companies, attorneys, experts, consultants, assigns, and successors, and each of them, on the one hand (hereinafter jointly, severally and collectively hereafter referred to as the "Holchem Related Entities"), and the Benjamin Parties, and their respective present and former representatives, including, without limitation, their respective agents, employees, servants, directors, officers, trustees, affiliates, subsidiary companies, parent companies, individual partners, attorneys, experts, consultants, assigns, and successors, and each of them, on the other hand (hereinafter jointly, severally and collectively referred to as the "Benjamin Related Entities"), hereby waive, release, acquit, and forever discharge the other (i.e. the Holchem Related Entities as to the Benjamin Related Entities and the Benjamin Related Entities as to the Holchem Related Entities), from and against any and all claims, lawsuits, damages, demands, sums of money, actions, rights of action, causes of action, response costs, attorneys' fees, litigation expenses, consulting fees, costs, expenses, obligations, fines, penalties, or liabilities of any kind or nature, whatsoever, which the Holchem Related Entities or the Benjamin Related Entities each have, or claim to have or assert to have, against the other, and which concern, arise out of, or in any way relate to the Subject Contamination, the Lease, the Asset Sale Agreement, the Property or any

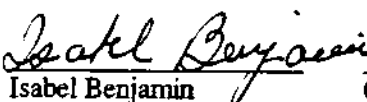
Handwritten initials/signature

"Hazardous Materials" (as defined in Section 9.1.1 of this Agreement) that previously existed or that exists or may exist in the future, or that may be claimed to exist in the future, upon, about, over, under, or beneath the Property, and/or that may have migrated, may hereafter migrate and/or threaten to migrate to or from the Property, including the Subject Contamination, in any air, soil, surface water, or groundwater, and including, but not limited to any acts, omissions or conduct arising out of or in any way concerning any aspect of the Federal Action, the State CERCLA Action, the Consent Decree, the State Prop. 65 Action, and/or the Consent Judgment, or any other acts, omissions, transactions, dealing, course of dealings, conduct or actions of any kind whatsoever related thereto. The matters released herein shall hereafter be referred to as the "Released Claims."

8.2 As to the Released Claims, each Party acknowledges and agrees that it understands the meaning and effect of Section 1542 of the California Civil Code, and each Party is expressly waiving and relinquishing any rights they have or may have under said Civil Code Section and under any similar or related section or any state and/or federal law. Civil Code Section 1542 provides, as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE
RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
DEBTOR.


Herman Benjamin


Isabel Benjamin

G.W.F. Hol

Each Party hereby waives and relinquishes every right or benefit each has or may have under Section 1542 to the fullest extent that such party may lawfully waive such right or benefit pertaining to the Released Claims. Each Party is aware that it may hereafter discover claims or facts in addition to or different from those it knows or believes to be true with respect to the matters released herein. Nevertheless, it is the intention of the Parties to



fully, finally, and forever settle and release all such matters, and all claims relative thereto, which do now exist, may exist, or may hereafter exist between them. In furtherance of such intention, each release given herein shall be and remain in effect as a full and complete release of all known and unknown claims, regardless of the discovery or existence of any additional or different claim or facts relative thereto.

8.3 Each Party hereby further agrees to assume the risk of any and all unknown, unanticipated or misunderstood claims that are released by the mutual releases contained in this Agreement. Similarly, to the extent (if any) that any other laws restricting or in any way limiting the waivers and releases provided herein are applicable, each of the Parties waives and releases, to the fullest extent provided by law, any right or defense that each might otherwise have or had under any law that limits or might limit or restrict the effectiveness or scope of any of the waivers or releases contained in this Agreement. In entering into this Agreement, and the releases herein contained, each Party assumes the risk of misrepresentation, concealment or mistake. Except for the warranties and/or representations expressly provided in this Agreement, if any Party should subsequently discover that any fact relied upon by it in entering into this Agreement was untrue, any fact was concealed from it, or that its understanding of the facts or the law was incorrect, no Party shall be entitled to any relief in connection therewith, including, without limiting the generality of the foregoing, any alleged right or claim to set aside or rescind this Agreement. This Agreement is intended to be and is final and binding among the Parties hereto, and except for the warranties and/or representations expressly provided in this Agreement, is fully effective, regardless of any claims, misrepresentations or promises made without the intention to perform, or any concealment of fact, mistake of fact or law, or any other circumstance whatsoever.

9. **THE INDEMNITY/HOLD HARMLESS AND DEFENSE OF THE BENJAMIN PARTIES:**

9.1 **Definitions**

As used in this Agreement, the following terms have the following definitions;

9.1.1 "Hazardous Materials" means any substance:

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(a) the presence of which requires an investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy, or common law; or

(b) which is or becomes defined as a hazardous waste, hazardous substance, pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*) and/or the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*); or

(c) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous, and is or becomes regulated by any governmental authority, agency, department, district, commission, board, agency or instrumentality of the United States, the State of California, or any political subdivision thereof; or

(d) the presence of which causes or threatens to cause a nuisance upon the Property or upon other properties or poses or threatens to pose a hazard to the health or safety of persons; or

(e) the presence of which on other properties could constitute a trespass;
or

(f) which contains gasoline, diesel fuel or other petroleum hydrocarbons;
or

(g) which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation, and/or

(h) which is referred to as the "Subject Contamination" which is defined in paragraph "L" of this Agreement.

9.1.2 "Environmental Requirements" shall mean all applicable present and future State, federal and local statutes, regulations, rules, ordinances, and/or codes, of any

governmental agency, department, commission, board, district, bureau, or instrumentality of the United States, the State of California and/or its political subdivisions, and any local government, and all applicable judicial, administrative and regulatory decrees, judgments, and orders relating to the protection of human health and the environment, including, without limitation: all such requirements, pertaining to reporting, licensing, permitting, investigation, work performed in connection with, and remediation, monitoring and/or analyzing of, emissions, discharges, releases, or threatened releases of Hazardous Materials into the air, surface water, groundwater, or land, whether solid, liquid, or gaseous in nature, whether related to past, present or future activities.

9.1.3 "Environmental Damages" shall mean any and all allegations, causes of action, rights of action, lawsuits, claims, demands, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and the expenses of investigation and defense, whether or not such claim or liability is ultimately defeated, and any good faith settlement or judgment of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation, reasonable attorneys' fees and disbursements and consultants' fees, that are suffered and/or incurred as a result of any past, present or future existence, remediation and/or attempted remediation of, any Hazardous Materials upon, in, on, over, about and/or beneath the Property and/or those Hazardous Materials that may have migrated and/or which may hereafter migrate and/or threaten to migrate to or from the Property, including but not limited to damages based on claims of personal injury, wrongful death, property damage, business interruption, diminution in property value, loss of rental value, lost profits, loss of business, damage to the environment and/or natural resources, trespass, nuisance or any other claims from any person relating to or arising out of Hazardous Materials upon, in, on, over, about and/or beneath the Property..

9.2 The Holchem Indemnity/Hold Harmless & Defense

9.2.1 Regardless of the waiver and release provided in Section 8 of this Agreement,

which the Parties acknowledge does not restrict or in any way limit the application of this Section 9.2, the Holchem Parties, their successors and assigns, hereby agree to indemnify, defend, reimburse and hold harmless the Benjamin Parties against any and all past, present and/or future Environmental Damages, of whatever nature, foreseen or unforeseen, arising from or related to the presence at any time of Hazardous Materials upon, in, over, about, and/or beneath the Property, and/or those Hazardous Materials having migrated and/or hereafter migrating and/or threatening to migrate, to or from the Property, or arising in any manner, whatsoever, foreseen or unforeseen, out of or related to any Environmental Requirements, or the violation thereof, pertaining to the Property (hereafter the "Indemnified Claims").

9.2.2 The obligations of the Holchem Parties shall include, but shall not be limited to, the burden and expense of defending the Benjamin Parties from the Indemnified Claims with qualified counsel selected by the Holchem Parties, who is reasonably approved by the Benjamin Parties (Rutan & Tucker, LLP and/or Richard Montevideo are hereby agreed to by the Benjamin Parties to be acceptable counsel and the Benjamin Parties hereby waive any claim that such counsel has a conflict of interest as a result of its prior or future representation of any of the Holchem Parties). The Holchem Parties shall defend the Benjamin Parties from the Indemnified Claims even if such liability, claims, suits, demands, and/or administrative proceedings are groundless, false or fraudulent, and (as part of such defense and indemnity), shall conduct all negotiations of any description, and shall pay and discharge, when and as the same become finally due, any and all final judgments, fines, penalties, interest or other sums due from the Benjamin Parties.

9.2.3 The Benjamin Parties agree to cooperate fully and completely in the defense provided to them by the Holchem Parties of any Indemnified Claims, including voluntarily providing documentation and other evidence concerning any such claims to the Holchem Parties, and agree to approve and to utilize qualified counsel selected by the Holchem Parties. The Benjamin Parties shall furthermore provide their time and cooperation to the Holchem



Parties in the defense of any of the Indemnified Claims, without charge or expense to Holchem, and shall make themselves reasonably available for discussion, consultation, discovery, and trial. The Benjamin Parties shall further fully cooperate with counsel selected by the Holchem Parties throughout the course of Holchem's investigation into the merits of the Indemnified Claims, and through any discovery to be conducted in connection with the Indemnified Claims, and any motions and pre-trial motions concerning the Indemnified Claims, as well as through any trial or appeal of the Indemnified Claims and any negotiations, mediations, settlement, or arbitration concerning the Indemnified Claims, until such have been fully and finally concluded.

9.2.4 Regardless of anything in this Agreement to the contrary, the Holchem Parties shall be entitled to challenge, settle, contest or appeal, at their sole and absolute discretion, any and all claims, demands, allegations, suits, actions or contentions, including any allegations of Environmental Damages and/or violations of any Environmental Requirements, and including any administrative, legal or equitable ruling, order, proceeding or judgment, from any person or any private, public, or governmental entity, brought or asserted against the Benjamin Parties and/or the Holchem Parties.

9.2.5 If the Holchem Parties do not provide the defense and/or indemnity to the Benjamin Parties as required above, the Benjamin Parties may collect as damages, the cost or expenses to retain their own separate legal counsel to defend themselves, and the Holchem Parties shall be liable for all reasonable attorneys' fees, and expert and non-expert costs incurred in such defense.

9.2.6 Regardless of any of the foregoing provisions set forth in this Section 9 of this Agreement, the Holchem Parties shall have no obligation to defend, indemnify, reimburse, or hold harmless the Benjamin Parties from:

(a) any product liability claims, or claims that relate to or arise out of the sale or distribution by the Benjamin Parties of any chemical or hazardous substance, to any other entity or person, including but not limited to, any claims, demands, allegations, damages or

causes of action or rights of action arising out of or relating to said person or entity's use of such chemical or hazardous substance, and including any exposure to such chemical or hazardous substance distributed or sold by any of the Benjamin Parties. The term "distribution" as used in this paragraph 9.2.6(a) shall not mean the onsite movement of Hazardous Materials through the air, soil and/or groundwater of the Property, and/or the migration of such Hazardous Materials to or from the Property. The Holchem Parties, and their authorized agents and employees, shall not encourage, aid, assist or in any way further any such claims, demands, causes of action or legal actions of any kind or nature, whatsoever;

(b) any claim concerning the State Prop. 65 Action and/or entering into the Consent Judgment, and/or using their best efforts to obtain approval and entry of the Consent Judgment from the Los Angeles Superior Court; and

(c) any defense costs, attorneys fees and any other related costs and expenses associated with the Benjamin Parties initially responding to the State CERCLA Action, and/or entering into the Consent Decree, and/or using their best efforts to obtain approval of the Consent Decree.

10. DISMISSAL OF CLAIMS WITH PREJUDICE

10.1 The Benjamin Parties and Holchem shall each respectively file a Notice for Dismissal of their respective claims against the other in the Federal Action, with prejudice, within seven (7) days of the date the Settlement Funds under Section 1.1 and the Purchase Payment under Section 1.2 have been paid and received by the intended recipient or their attorneys, and title to the Property has been transferred to Holchem as provided under Section 1.2. Each party to this Agreement shall take all action as may be necessary, at their sole cost and expense, including filing additional pleadings and documentation with the U.S. District Court, if necessary, to promptly obtain full and complete dismissal of the Federal Action with prejudice.

Handwritten initials/signature

11. CONDITIONS PRECEDENT TO EFFECTIVENESS OF AGREEMENT

11.1 This Agreement is subject to, contingent upon, and shall be deemed void *ab initio*, and shall have no force or effect, unless and until: (a) the timely receipt by Holchem of all Settlement Funds from the Insurers in accordance with Section 1.1 of this Agreement; (b) the recordation of a Grant Deed conveying fee title to Holchem in accordance with Section 1.2 of this Agreement; (c) the timely receipt by Herman Benjamin of the Purchase Payment in accordance with Section 1.2 of this Agreement; (d) the Benjamin Parties' and Holchem's approval and execution of the Consent Decree and the Consent Judgment; and (e) the execution of this Agreement by the Benjamin Parties and the execution of this Agreement by G.W.F Hol on behalf of the Holchem Parties, except Holland Chemical International, Ltd. The execution of this Agreement shall be deemed conclusively to be the manifestation by the Parties of their approval of the Consent Decree and Consent Judgment, which are both substantially the same in every material respect as Exhibits "A" and "B" attached hereto.

12. GENERAL PROVISIONS

12.1 **Compromise.** This Agreement is being entered into, and any and all consideration is being paid or given, in compromise of disputed claims. Therefore, the entering into of this Agreement, the payment or giving of any consideration, or anything else provided for by the provisions of this Agreement, shall not be construed as an admission of any liability, whatsoever on the part of any of the Parties hereto.

12.2 **Integrated Agreement.** This Agreement supersedes any and all oral or written agreements, or any statements or representations from any person or entity and contains the entire agreement and understanding between the Holchem Parties and the Benjamin Parties with respect to the subject matter of this Agreement and the transactions contemplated by said Parties as set forth in this Agreement. All prior discussions, agreements and understandings of any nature between the Holchem Parties and the Benjamin Parties including but not limited to the Asset Sale Agreement and the Lease are hereby merged into this Agreement and are superseded by this Agreement.

12.3 **Waivers.** The Holchem Parties and the Benjamin Parties may waive any breach, right

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or remedy, but not any obligation, of this Agreement, only by a writing signed by the waiving party. The waiver of any breach, right or remedy will not be a waiver of any other breach, right or remedy.

12.4 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which will be an original but all of which together will constitute one and the same instrument.

12.5 **Amendments, Interpretation.** This Agreement may not be modified or amended except by an agreement, in writing, signed by the Holchem Parties and the Benjamin Parties. The Holchem Parties and the Benjamin Parties have cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against the Holchem Parties or the Benjamin Parties. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision.

12.6 **Survival of Warranties.** All representations, warranties, covenants and agreements of the Parties contained in this Agreement shall survive the delivery and implementation of this Agreement.

12.7 **Use of Independent Counsel.** The Holchem Parties and the Benjamin Parties acknowledge that they have been advised by their attorney(s), accountants and representatives with respect to the subject matter of this Agreement and their rights and obligations in connection with this Agreement, and in particular, of the effect and import of the release and waiver of California Civil Code Section 1542, and they are not relying upon statements made by any other party, person, consultant or counsel in entering into this Agreement.

12.8 **Terminology.** Whenever the context requires, the singular shall include the plural, and the masculine, the neuter, and the feminine. "Include" means "include, without limitation," and "including" means "including, without limitation." "And" is conjunctive and means all of the possibilities listed. "And/or" means both "and" and "or". "Or" is disjunctive and means either one, or the other, or any combination of the alternatives listed. "Person" means any natural individual, or corporation, partnership, firm, association, organization or other enterprise.

12.9 **Further Agreements.** The Holchem Parties and the Benjamin Parties shall execute and deliver such documents and do such other and further acts and deeds as may be required to further evidence or effectuate the rights, liabilities, and obligations provided for under this Agreement.

12.10 **Attorneys' Fees and Litigation Costs and Expenses.** If the Holchem Parties or if the Benjamin Parties prevail in any legal action or proceeding against the other to interpret this Agreement, or to enforce, defend or construe rights or obligations under any provision of this Agreement or any part of this Agreement, then the prevailing party shall recover from the other party to the action or proceeding, all reasonable legal expenses and costs (including reasonable attorneys' fees) that the prevailing party incurred or may incur in connection with the action or proceeding, and on any appeal thereof.

12.11 **Governing Law.** As to each of the Benjamin Parties and each of the Holchem Parties, or their successors or assigns, it is agreed that this Agreement is and will be governed by and construed in accordance with California law as applied to contracts entered into in California between California residents and to be performed in California.

12.12 **Forum.** In the event of litigation between any of the Holchem Parties and any of the Benjamin Parties arising from, relating to, or involving in any way any aspect of this Agreement, or any aspect of any right created by or extinguished by this Agreement, such action must be filed and prosecuted in the Superior Court of the State of California for the County of Los Angeles or in the United States District Court in and for the Central District of California, whichever may be appropriate, and each of the Parties hereto consents to the jurisdiction of such courts. This Agreement is made and entered into in the County of Los Angeles, State of California.

12.13 **Contractual Terms.** Each term of this Agreement is contractual and not merely a recital, and the Recitals set forth above are to be considered contractual terms of this Agreement.

12.14 **Binding Effect.** This Agreement will be binding upon and shall inure to the benefit of the Holchem Parties and the Benjamin Parties and their respective trustees, shareholders, officers, directors, successors and assigns. With respect to Herman Benjamin and Isabel Benjamin,

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individually, this Agreement is binding upon and shall inure to the benefit of their respective heirs, executors, insurers, administrators or personal representatives. With respect to the Benjamin Family Trust Dated October 13, 1987 and the Holchem Parties, any change in the trust, ownership, corporate status or organization, including but not limited to, any merger, acquisition or any transfer of assets or real or personal property, shall in no way alter the rights, obligations or responsibilities of such parties under this Agreement. Each of the corporations constituting the Holchem Parties are principal obligors under this Agreement and their rights, obligations and liabilities under this Agreement are joint and several in nature and effect. Each of the persons constituting the Benjamin Parties are principal obligors under this Agreement and their rights, obligations and liabilities under this Agreement are joint and several in nature and effect.

12.15 **Expenses.** The Holchem Parties and the Benjamin Parties will bear their own costs and expenses (including attorneys' fees and consultants' fees and costs) and all costs and expenses incurred in connection with the matters resolved and settled herein, and any and all prior costs and expenses incurred in connection with the Subject Contamination.

12.16 **Time is of the Essence.** With reference to the rights, obligations and duties herein referred to, time is expressly herein stipulated to be of the essence.

12.17 **Caption Headings.** The caption headings used through this Agreement are for convenience, only, and shall not be construed as affecting the interpretation or meaning of this Agreement.

12.18 **Notice and Service of Process.**

12.18.1 **Notice to the Benjamin Parties:** Any notice to be given hereunder shall be given to the following persons by first class United States Mail, and by fax transmission. To any of the Benjamin Parties:

Steven L. Feldman, Esq.
Goldfarb, Sturman & Averbach
15760 Ventura Boulevard, Suite 1900
Encino, California 91436-3012
Fax: (818) 905-7173

12.18.2 **Notice to the Holchem Parties:** Any notice to be given hereunder shall

be given to the following persons by first class United States Mail, and by fax transmission.

To any of the Holchem Parties:

Richard Montevideo
Rutan & Tucker
611 Anton Blvd., Suite 1400
Costa Mesa, CA 92628-1998
Fax: (714) 541-9035

Michael Whalen, Esq.
HCI USA Distribution, Inc.
424 S. Woods Mills Road, Suite 325
Chesterfield, MO 63017-3428
Fax: (314) 205-0303

12.18.3 Service of legal process, (including service of a summons and complaint and/or subpoena), shall be effective as to the Benjamin Parties or the Holchem Parties, whichever the case may be, within ten (10) days after service by United States Certified Mail, Return Receipt Requested, of a mailing containing such legal process delivered to the particular party at the address indicated above. Receipt by the particular party, at the indicated address, containing the legal process (including receipt of a summons and complaint and/or subpoena) shall have the same full force and effect as if it was personally served.

12.19 The addresses to which notices or service of legal process (including summons and complaint and/or subpoena) is to be sent may be changed by like notice sent by any one Party to the other; provided, however, it is further agreed that any address at which any notice or service of process (including any summons and complaint and/or subpoena) may be sent shall not be changed to an address located outside of the State of California nor to any address where U.S. Mail is not received on a daily basis.

THE BENJAMIN FAMILY TRUST DATED OCTOBER 13, 1987
Date: 11-1-99 By: Herman Benjamin
Herman Benjamin, Trustee

THE BENJAMIN FAMILY TRUST DATED OCTOBER 13, 1987
Date: 11-1-99 By: Isabel Benjamin
Isabel Benjamin, Trustee

CHASE CHEMICAL CO., INC.

Date: 11-1-99 By: Herman Benjamin
Herman Benjamin, on behalf of Chase Chemical Co.,
Inc., a dissolved corporation, as its former President

Date: 11-1-99 By: Herman Benjamin
Herman Benjamin, an individual

Date: 11-1-99 By: Isabel Benjamin
Isabel Benjamin, an individual

HOLCHEM, INC., a corporation

Date: _____ By: _____
G.W.F. Hol, aka Adrian Hol

HCI USA DISTRIBUTION COMPANIES, INC., a
corporation

Date: _____ By: _____
G.W.F. Hol, aka Adrian Hol

HOLLAND CHEMICAL INTERNATIONAL N.V., a
corporation

Date: _____ By: _____
G.W.F. Hol, aka Adrian Hol

CHASE CHEMICAL CO., INC.

Date: 11-1-99 By: Herman Benjamin
Herman Benjamin, on behalf of Chase Chemical Co.,
Inc., a dissolved corporation, as its former President

Date: 11-1-99 Herman Benjamin
Herman Benjamin, an individual

Date: 11-1-99 Isabel Benjamin
Isabel Benjamin, an individual

HOLCHEM, INC., a corporation

Date: 11-2-99 By: G.W.F. Hol aka Adrian Hol

HCI USA DISTRIBUTION COMPANIES, INC., a corporation

Date: 11-2-99 By: G.W.F. Hol aka Adrian Hol

HOLLAND CHEMICAL INTERNATIONAL N.V., a corporation

Date: 11-2-99 By: G.W.F. Hol aka Adrian Hol

CHASE CHEMICAL CO., INC.

Date: 11-1-99 By:

Herman Benjamin
Herman Benjamin, on behalf of Chase Chemical Co.,
Inc., a dissolved corporation, as its former President

Date: 11-1-99

Herman Benjamin
Herman Benjamin, an individual

Date: 11-1-99

Isabel Benjamin
Isabel Benjamin, an individual

HOLCHEM, INC., a corporation

Date: 11-2-99 By:

G.W.F. Hol, aka Adrian Hol

HCI USA DISTRIBUTION COMPANIES, INC., a corporation

Date: 11-2-99 By:

G.W.F. Hol, aka Adrian Hol

HOLLAND CHEMICAL INTERNATIONAL N.V., a corporation

Date: 11-2-99 By:

G.W.F. Hol, aka Adrian Hol

LB

APPROVED AS TO FORM:

GOLDFARB, STUELMAN & AVERBACH

By: 

Steven L. Feldman, Attorney for Herman Benjamin both individually and as Trustee of the Benjamin Family Trust Dated October 13, 1987, Isabel Benjamin, both individually and as Trustee of the Benjamin Family Trust Dated October 13, 1987, Chase Chemical Co. Inc., a Dissolved Corporation

RUTAN & TUCKER, LLP

By: _____

Richard Montevideo, Attorney for Holchem, Inc., a corporation, HCI USA Distribution Companies Inc., a corporation and Holland Chemical International N.V., a corporation



